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MUNICIPAL GOVERNMENT AND ADMINISTRATION

BY THE SAME AUTHOR

THE GOVERNMENT OF EUROPEAN CITIES

THE GOVERNMENT OF AMERICAN CITIES

PRINCIPLES AND METHODS OF MUNICIPAL ADMINISTRATION

THE GOVERNMENT OF THE UNITED STATES

A BIBLIOGRAPHY OF MUNICIPAL GOVERNMENT

MUNICIPAL GOVERNMENT AND ADMINISTRATION

BY

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Volume I

GOVERNMENT

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To

Frank Graham Thomson

PREFACE

The purpose of these volumes is (1) to sketch briefly the history of municipal development from earliest times to the present day, (2) to describe the organization of municipal government as it now exists, (3) to indicate the chief problems of present-day municipal administration, and (4) to explain the methods which are being used in the attempt to solve these problems. The first and second of these divisions are covered in Volume One, the third and fourth in Volume Two. Under this arrangement the two volumes, although they naturally supplement each other, are devoted to entirely distinct fields,—the first dealing with history and organization, the second with activities and methods.

When Thomas Madox, two hundred years ago, undertook to describe the government of the English boroughs, he began his treatise with the observation that "whoso desireth to discourse in a proper manner concerning corporate towns and communities must take in a great variety of matter." Today, of course, this "great variety of matter" has grown to be so extensive that even in a thousand printed pages one cannot hope to "discourse in a proper manner" concerning every phase of the subject. The government and administration of the modern city have been woven into a seamless web too vast for the comprehension of any human eye or for description by any single pen. All that one can hope to do is to pick out the main threads, discover whence they have come, and try to indicate whither they seem to be going.

In these volumes, accordingly, the outstanding topics have been given the right of way and details have been omitted unless they seemed to be essential to the clarity of the discussion. The endeavor has been to get the facts hitched up to principles, and these principles set in their rightful perspective. On the other hand, no phase of the subject has been avoided, or dismissed in a few sentences, for the mere reason that it is technical, complicated, or difficult. There is nothing to be gained by indulging in the vain pretense that all the problems of the modern municipality are simple when assuredly they are not. The man who believes that a mastery of municipal government presents no serious difficulties may rest satisfied on one of two things:—either that he has a remarkable genius for the study of this subject, or that he has not been into it very far.

Any military tactician will tell you that the best way to reduce a difficult position is to concentrate upon it an enfilading or cross fire from two or more vantage points,—to get at it from the front, from both flanks, and from the rear if possible. My own experience as a teacher of municipal government leads me to the conclusion that there is a good deal to be said for the same tactics in our intellectual assaults upon difficult problems of political science. It is for this reason that I have not hesitated, in the course of the present discussion, to come at the same themes again and again, from different angles, and in different chapters. The close relation between different portions of the subject, moreover, has sometimes made it desirable to give a few general explanations in one place while reserving further discussion for a later stage. What may seem to be repetition, therefore, is the outcome of a conscious intent.

Although these volumes deal with municipal government and administration on an international basis, the chief emphasis has been placed upon the experience, organization, activities, and methods of cities in the United States. This has been done not only because there are more cities in the United States, and more great cities, than in any other country, but because America is now furnishing the world with its best laboratory of municipal experimentation. Europe has as much to learn from us, in this branch of popular government, as we now have to learn from Europe. It was not so a generation ago, and the fact that the situation has so greatly changed may be looked upon as a tribute to the striking progress which American cities have made in the structure of their governments, in their administrative machinery, and in the efficiency of their business methods during the past quarter of a century. There are, indeed, some branches of municipal administration—such as public health, public recreation, public lighting, education, and fire protection—in which the more progressive among American cities need no longer pay any deference to their prototypes across the sea.

Several of my colleagues at Harvard have placed me under deep obligations by reading those portions of my manuscript and proof which deal with matters within their respective fields of special competence. For this service, which has brought me many helpful suggestions, I am indebted to Professors R. P. Blake, H. H. Burbank, W. S. Ferguson, James Ford, A. C. Hanford, A. N. Holcombe, H. V. Hubbard, H. J. Hughes, A. J. Inglis, C. A. McLain, M. J. Rosenau, and G. C. Whipple. For similar assistance I am also sincerely grateful to Professors Charles E. Merriam of the University of Chicago, William Anderson of the University of Minnesota, R. M. Story of the University of Illinois, and P. Orman Ray of Northwestern University; likewise to Mr. John Nolen of Cambridge, Mr. G. H. McCaffrey of Boston, Mr. F. H. Wentworth of the National Fire Protection Association, Mr. Edward Dana of the Boston Elevated Railway, and Dr. H. W. Dodds of the National Municipal League. In the preparation of the bibliographical references, and in many other ways, I have had invaluable aid from Mr. Joseph Wright, Superintendent of the Library for Municipal Research at Harvard University.

When any college teacher writes a book on a subject which he has been handling in the classroom year after year, his indebtedness to successive generations of former students is likely to be more extensive than he realizes. Let me take this opportunity, therefore, of tendering my acknowledgment to the keen-witted young men who have frequented my classroom during the past twenty-two years, who have asked me many, many questions that I could not answer, who by so doing have constrained me (I hope) to an attitude of intellectual humility, and have furnished me with food for daily reflection on the various matters that I have written about in this book.

WILLIAM BENNETT MUNRO

June 5, 1923

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Volume I
GOVERNMENT

MUNICIPAL GOVERNMENT AND ADMINISTRATION

CHAPTER I

THE DAWN OF URBAN CIVILIZATION

The Growth of Cities Made the Development of Civilization Possible.

The growth of cities has been one of the greatest factors in the progress of civilization. Despite the old saying that "God made the country and man made the town" it is readily demonstrable that the development of the arts and the sciences, to which the human race owes its power, has been very largely, indeed almost exclusively, the work of the city populations. It was the city that first made possible the intellectual advance of mankind. With the city came economic intercourse, division of labor, wealth, leisure and education. Broadly speaking, high culture is everywhere city-bred. So long as men remained in the nomadic, pastoral, or agricultural stages there was no stimulus to intellectual activity. The intimate contact of many minds is essential to the general advance of human intelligence. It is "the crowd, the hum, and the shock of men," as Bagehot says, that sharpens the intellect, stimulates initiative, and rouses the people to united action. When races progressed from keepers of flocks and herds to dwellers in villages and towns they entered a new intellectual, economic, and political era.

Some Examples.

If one will glance over the course of history, from the days of Memphis and Thebes to the present time, it will be readily observed that great and progressive nations have had many cities, while backward nations have had very few. The cities of Babylonia testified to the greatness of that ancient realm. Free cities, like Tyre and Sidon, were the prime centers of early commercial prosperity. The highest culture of the Greeks was reached in city-states. The home of Roman law and government was a great city, and when for a second time Italy led the world she was a complex of city-states. The Hanse towns and the Flemish communes, the chartered boroughs of England, and the throbbing metropolitan centers of twentieth-century America—each in their day prefigure the highest attainments of the human race. It is an arguable proposition, indeed, that the degree of civilization which a nation has reached can be as readily gauged by the number and size of its cities as by any other test. The greatness of the Roman empire is plainly attested by the large number of prosperous cities that it contained; the collapse of civilization in the Dark Ages is proved by the obliteration or decay of these urban communities. City growth and civilization have always gone hand in hand. The massing of the population into cities throughout the civilized world at the present day is causing some alarm to gentle minds; but history affords no ground for the belief that a nation is weakened by the urbanization of its people. On the contrary, this process has been the outward mark of increasing national power and culture. Cities have promoted and not impeded the progress of civilization.

How This Was Effected.

Let us be more definite. In what ways did the growth of urban communities promote the early advance of civilization? First of all, it made division of labor possible, thus increasing the productive power of the people. With this increase in productive power, men were enabled to work less and to have leisure for self-development. It made co-operation possible and inspired the people to concerted action in the common interest. It led to the creation of new economic wants and provided at the same time the means of supplying them. It promoted discussion, facilitated the interchange of ideas, and furnished opportunities for transforming ideas into actualities. When people grouped themselves into cities and towns, moreover, they felt safer from their enemies; they could accumulate wealth with some assurance that it would not be taken away from them. Life, property and privileges were not always safe within the city gates; but they were safer there than anywhere else. The city enabled men to co-operate, to live what Aristotle called "a common life for a noble end." Ideas and feelings spread more readily there than elsewhere; the people soon created a social environment and bequeathed to their children a social heritage. Through daily intercourse and mutual dependence upon one another they developed a neighborhood consciousness and the beginnings of civic pride. All these things became possible when men left the land and gathered themselves into organized communities. Primitive man chose the sites; civilized man built the cities.

The Earliest Cities: Memphis and Thebes.

It is probable that cities first made their appearance in the valley of the Nile. Along this capricious stream there were scores of prehistoric communities, for the cultivation of the river valley required a huge amount of organized labor and necessitated the building of settlements in the immediate neighborhood. The earliest city of which we have any definite record is Memphis, the capital of Egypt under the Old Empire which came to its close about 2500 B.C.[1] With the advent of the Middle Empire, a new capital was established. This was Thebes, which remained the seat of the Pharaohs for a thousand years or more.[2] Although Egypt in these early centuries possessed a large population, Memphis and Thebes were the only two cities of importance. The country was agricultural for the most part, but a considerable amount of trade and industry was also carried on. The masses of the population were servile, bound to the land; the free workmen and traders in the towns were numerous, but they formed a relatively small element in the country as a whole.[3] There were no large industrial or commercial cities. Both Memphis and Thebes owed their importance to the fact that they were seats of political power. The ancient records of Egypt speak of them in unrestrained superlatives, but in all probability they were not large places. What their population was we do not know, nor have we any data on which to make an estimate that would be other than guesswork. Neither do we know how they were governed, although it is a warrantable inference that they were under the despotic rule of the Pharaohs as completely as all other portions of the country.

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[1] Memphis was a walled city, situated on the west bank of the Nile, about twelve miles south of the present Cairo. Under the Hebrew name of Noph it is frequently mentioned in the Old Testament (e.g., Ezekiel xxx, 13, 16; Jeremiah ii, 16; Isaiah xix, 13). Tradition describes it as a city of temples and palaces, amazing in their grandeur.

[2] Thebes was known to the Old Testament writers as No Ammon; in the days of the prophets it was a rich and powerful city, whose punishment and desolation both Jeremiah and Ezekiel predicted. The *Iliad* makes mention of its "hundred gates" (Book IX).

[3] Eduard Meyer, *Die wirtschaftliche Entwicklung des Altertums* (Jena, 1895), especially pp. 9-10.

Nineveh and Babylon.

The empires of Mesopotamia, in the fertile valleys of the Tigris and the Euphrates, had many cities, the largest of which were also political capitals.[1] Nineveh, the capital of the Assyrian empire, is the best known among them, although the ruins of several others have been uncovered. For centuries the arrogant power of Nineveh dominated a wide area, an "exceeding great city," according to the Old Testament, and one "in which there were one hundred and twenty thousand people who knew not their right hand from their left."[2] Her ruins indicate that Nineveh was really a group of cities covering an area considerably larger than modern Paris and protected by an elaborate system of defenses. Babylon, the habitat of Nebuchadnezzar, and the bitter rival of Nineveh, was also "an astonishment among the nations."[3] The walls of Babylon, according to Herodotus, were fourteen miles long; which is a characteristic exaggeration, although the city was more populous than Nineveh and undoubtedly the largest of ancient communities prior to the rise of Rome. Nineveh was called the stone city; Babylon, the brick city. During the period of Babylon's greatest prosperity the Jewish exiles spent the years of their captivity in and around the city, and they were greatly impressed by its magnificence as their records attest. The Medes and the Persians sacked and destroyed Babylon in 538 B.C. thus fulfilling the Hebrew prophecy that the place would be turned into a desolation, without an inhabitant.

Tyre and Sidon.

Tyre and Sidon, the seaports of Phœnicia, were the earliest examples of commercial cities. They carried on extensive commerce, and dotted the shores of the Mediterranean, both north and south, with their trading posts and colonies. Penetrating to all corners of the ancient world, their commercial prosperity lasted for several centuries, and their trading posts became the sites of several modern cities. These Phœnicians were of Semitic stock, a race which has shown in all ages a keen commercial sense and a taste for life in proximity to the marts of trade. Of Phœnician government, however, we know very little. Tyre and Sidon were city-states, each governed by a king, and the people as a whole possessed no regular political prerogatives. Apart from the invention of a workable alphabet, the greatest achievement of the Phœnicians was the founding of Carthage, about 800 B.C.

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[1] In translations from ancient writing the term "city" has been indifferently applied to everything from a collection of tents in a desert oasis to a great walled metropolis. Rawlinson says that Egypt, in its most flourishing days, contained 20,000 cities, but to get this figure it must have been necessary to include every small group of mud huts in the Nile valley.

[2] Jonah iii, 3; iv, 11. Nineveh was destroyed in 606 B.C.

[3] Jeremiah ii, 41.

Carthage.

Carthage also became a great maritime power and dominated the Mediterranean from the Pillars of Hercules to the Great Syrtis. At the pinnacle of her power Carthage probably had a population of three hundred thousand and possibly more.[1] But whatever her population the Sidonian colony was a great hive of industry; her woven goods were renowned everywhere. Her people excelled in making cheap goods in imitation of Egyptian and Greek wares. These the Carthaginian traders exchanged for raw products; their ships roamed southward to the coasts of Central Africa and sometimes as far northward as the shores of England. The government of Carthage was oligarchic—a plutocracy—for although there was a senate and an assembly, the governing authority rested with a self-perpetuating council of one hundred which was dominated by a small coterie of opulent traders. The city was one vast market and counting-house; its people had neither time nor taste for developing the cultural activities. The Carthaginian sway extended at one time over the whole North African coast, the Mediterranean shores of Spain, Corsica, Sardinia, and the eastern end of Sicily. Tribes and villages throughout this area were ruled with an iron hand and forced to pay heavy tribute. Aristotle deals with the constitution of Carthage in his great disquisition on the science of government, but only superficially, and though he is inclined to praise it, his description hardly justifies his panegyric.[2] Carthage, as a matter of fact, contributed nothing to the science of government and very little to any other field of human knowledge.[3]

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[1] H. G. Wells, in his *Outline of History* (Vol. I, p. 217), says that the city "probably had the hitherto unheard-of population of a million." This figure is unquestionably far too high.

[2] *The Politics of Aristotle* (Jowett's edition, 2 vols., Oxford, 1885), Vol. I, p. xlvii.

[3] Notwithstanding the complete destruction of the city in 146 B.C., Carthage was restored about a hundred years later and became an important place during the second and third Christian centuries.

The Holy City.

There is one city of the ancient world which, despite its economic insignificance, cannot be allowed to go unmentioned, for in literature and tradition it bulks larger than any other. This is Jerusalem, which reached the climax of its prosperity in the days of David and Solomon. But the holy city of the Jews was a very small community when compared with Nineveh, Babylon, Tyre, or Carthage. At the height of its ancient glory Jerusalem probably did not have a resident population exceeding twenty thousand. Several times it was pillaged and twice it was utterly destroyed. In its early stages the government of the city was of a priestly type, but after the revolt and secession of the Ten Tribes it became merged in the government of the kingdom of Judah. The part which Jerusalem has played in the drama of human history is out of all proportion to its ancient strength and prominence.

A Land of City-States.

None of these cities made any permanent contribution to the art of municipal government. They were monarchical capitals, or trading centers, or holy places, with no fixed political traditions. The hand of the despot lay heavily upon them all. It remained for the Greeks to develop a system of independent, self-governed cities, each the center of a vigorous political life. Miletus, Athens, and Corinth were not mere palace-cities, or centers of trade, but urban communities in the modern sense with a high degree of political and economic vitality. The geography of Greece favored the growth of independent cities and for a long period these cities enjoyed home rule in the fullest sense. The chronicles of Greek civilization begin and end in the cities; the whole effort of the Hellenic race was concentrated upon the betterment of urban life and conditions. Almost the entire free population of Greece lived within the city walls, although many of the people owned lands outside and maintained large bodies of slaves to cultivate them. Ancient Greece was a nation of cities. In the early centuries the fear of pirates and plunderers, in latter days the taste for oratory and politics, kept men from living scattered in the rural areas and brought them into settlements where they found both safety and companionship.[1]

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[1] "Here rose a little state; another near
Grew by like means
And joined through love or fear."
Pope, *Essay on Man*, Epistle III.

Urban Greece.

There were many cities in Greece,—Athens, Corinth, Miletus, Sparta, Chalcis, Samos, Ægina, and Eretria are only the best known among them. There were scores of smaller communities located so closely together that one began where the other ended. Even the largest was not so large as to shut out a view of the surrounding country. It should not be imagined, indeed, that the people of the Greek cities were, like the population of the modern town, chiefly artisans, traders, and the like. Large numbers of them were engaged in agriculture; there were olive groves and vineyards within the city walls. Even at Athens life was so little removed from the truly rural that the crowing of the cock served as the town's *reveille,* and some literary connoisseurs have detected a barnyard flavor in the urban comedies of Aristophanes. Town and country were fused in Greek city.[1] Farmer, artisan, fisherman, and trader lived side by side. Each city, however, was substantially on a basis of self-determination; between them there was no common allegiance. Although all the Greek cities were peopled by men and women who spoke the same language, worshipped the same gods, and looked upon all non-Greeks as barbarians, there was no common Greek citizenship. Men were citizens of Athens, or of Corinth, or of Sparta,—not citizens of Greece.

Athens: Its Beginnings.

Athens, of course, was the largest and most important among Hellenic cities, contributing more to the progress of civilization than all the others combined. The beginnings of the city are veiled in prehistoric darkness; but we have the statement of Thucydides that the pressure of piratical raids drove the population of various small settlements to take refuge in a single sheltered location four miles inland from the head of the Piræus.[2] There, in the center of a fertile plain, surrounded on three sides by rugged mountains, the new city grew rapidly in population and wealth. Although the Persians captured and burned the place in 479 B.C., it rose from its ashes and reached the height of its greatness in the age of Pericles. Never has any people unfolded itself in a shorter time with such brilliant and enduring results. Had Sparta and Athens proved able to unite their energies instead of weakening each other in fratricidal conflict, each would have accomplished a great deal more. But no two cities of the same race were ever more unlike in their ideals, purposes, and civic temperament. Sparta was oligarchical, harsh to strangers, and so unliterary that her people have left us hardly a line. Athens, on the other hand, was democratic, liberal, highly cultured, and, on the whole, a rather cosmopolitan place.

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[1] There is an admirable discussion of this theme in W. S. Ferguson, *Greek Imperialism* (Boston, 1913), Ch. 1.

[2] As to the relative importance of the various factors which led to the founding of Athens and the other Greek cities there is a difference of opinion among the authorities. Some believe that community of religion was the most important factor; others maintain that the cities were, in their origin, places of refuge against attack. For a statement of the two views see N. D. Fustel de Coulanges, *The Ancient City*, pp. 167-176, and Rudolph von Ihering, *The Evolution of the Aryans* (New York, 1897), pp. 86-87. W. Warde Fowler, *The City-State of the Greeks and Romans* (London, 1908), pp. 42-46, believes that both these factors were influential, and other factors as well.

Its Status As a Community.

Like the other cities of Greece, Athens was not a municipality in the modern sense, but a city-state.[1] She was not subject to any government but her own. No distinction, indeed, could be drawn in ancient Greece between national and municipal government—the two were combined. Athens, Sparta, Corinth, Miletus, and Syracuse all possessed territory outside the city walls from which they drew their food supplies. This territory was essential to the existence of the city; but it counted for little or nothing politically. It was in the πόλις, the city proper, that all political life was centered. Its government performed both local and national functions. It declared war and made peace, ratified treaties, authorized the construction of streets and public works, levied taxes, policed the city, and managed the harbor.

Topography and Population of Athens.

The region around Athens, which the city controlled, was known as Attica. It was less than forty by fifty miles in area—about the size of a Massachusetts county. It was not a very fertile tract, but by careful cultivation was made to yield a large part of the city's subsistence. The city itself was in two parts—Athens proper, which surrounded the Acropolis, and the port or harbor-town, four or five miles away, known as the Piræus. The two were connected by a road which ran between long defensive walls. The city proper had an area of about two square miles and a population of perhaps one hundred thousand. Xenophon mentions that it had ten thousand houses. The

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[1] Athens had in Attica, however, a number of villages and towns. each with its own local government. These were municipalities in the modern sense, or nearly so; they were not city-states.

Piræus housed from thirty to forty thousand, and the total population of Attica was probably less than four hundred thousand, of whom the majority were slaves.[1] Racially it was a fairly homogeneous population; the people were mostly Greeks. There was a sprinkling of aliens, particularly in the Piræus; but these "aliens" were also mostly Greeks. They were non-Athenians. Like the slaves, they were disfranchised, and there was no regular method of naturalization.

History of Its Municipal Government.

Athens passed through various stages of political organization. Its government at the outset was of the "king-priest" type, a form of rule in which all authority, both civil and religious, was concentrated in the hands of one hereditary ruler. These royal powers rested upon no written law and constituted no real absolutism, but were "able to gain in strength as custom hardened, provided the kings themselves and families were equal to the task of maintaining their prestige."[2] The king had an advisory council of nobles who gradually extended their own functions, usurped the royal prerogatives, and finally divested the kingship of its civil authority. Then ensued a long period of aristocratic government which ultimately developed into a rigorous oligarchy with all political power in the hands of a few privileged noble families. Next in the order of events came the rise of an artisan class, the extension of political privileges to a larger proportion of the population, and the gradual elevation of the rank and file of the people to a point where they could control the government. The laws of Solon (594 B.C.) marked a notable stage in this development. Solon created the institutions and constructed the machinery of the Athenian democracy, but it was Cleisthenes who first made this machinery function and secured to the whole body of the citizens a decisive share in the conduct of Athenian government. The administration of Athens (including the subsidiary municipalities or *demes*) after the Cleisthenic reorganization ought to be briefly described, for it is not without interest even at the present day.

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[1] These figures are somewhat below the estimates given in T. G. Tucker's *Life in Ancient Athens* (New York, 1921), p. 23. There is a long discussion of the matter in Julius Beloch, *Die Bevölkerung der griechischen-römischen Welt*, included in his *Historische Beiträge zur Bevölkerungslehre* (1886). Beloch places the population of Athens (including the Piræus) at 120,000. His estimates of the population of other ancient cities are as follows: Syracuse, 115,000; Corinth, 90,000; Sparta, Argos, Tyre and Sidon, 40,000 to 50,000 each.

[2] W. Warde Fowler, *The City-State of the Greeks and Romans* (London, 1908), p. 85.

The Athenian Assembly.

Ostensibly the supreme political body in democratic Athens was the general assembly (*Ecclesia*) or mass meeting of all the adult male citizens. Theoretically all male Athenians over eighteen years of age had the right to attend, but large numbers of them did not. The meetings were usually held in the open air. The assembly, however, was not a lawmaking body. The Athenian regarded the laws as divinely-given, and committed to writing once for all by Solon, hence not subject to change at the mere caprice of a mass meeting. These laws were, for the most part, simple rules or precepts. Much of the assembly's work was of an executive and judicial character. It was a body which dealt with the election of officers, with questions of war and peace, alliances, the levying of taxes, the erection of new public works, and the trial of high crimes against the state. To prepare business for the assembly, to carry out its decisions, and to manage the routine of administration there was a *Boulé* or Council of Five Hundred chosen annually by lot from among the whole body of the citizens over thirty years of age. This body, being obviously too large for the handling of routine business, devolved such work upon special committees (*Prytanies*) which were changed ten times a year. Each committee chose its chairman by lot, a new choice being made every day. Thus it was that for at least one day of his life, each Athenian citizen might hope to sit on the apex of the administrative pyramid.

The Dikasteres.

The administration of justice, save in the case of the most serious offences, was given over to popular tribunals known as the *Dikasteres* which were constituted by drawing jurors from among the citizens by lot.[1] Jury panels are still drawn by lot from the citizenship of the modern community, but there is no historical connection between the Athenian tribunals and the modern jury.

Ancient and Modern Municipal Democracy.

From every point of view the democracy of ancient Athens was vastly different from the municipal democracy of today. It was a form of government by the *citizens*, just as the English city of a hundred years ago presented a spectacle of government by the *freemen;* but in neither case did these words carry their present-day implications. On the other hand it is hardly fair to suggest, as Mr. H. G. Wells has done, that the Athenian democracy was merely another name for government by a close corporation.[1] To transact certain forms of public business, for example, an attendance of at least six thousand citizens was required at assembly meetings. Athenian democracy meant government by a privileged class, but this class was never so small that it could properly be called a close corporation. It included, moreover, not only the rich and powerful among the citizens, but artisans, tradesmen, seamen from the Piræus, and farmers from both within and without the walls.

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[1] There is a full discussion in J. W. Headlam, *Election by Lot at Athens* (Cambridge, England, 1891).

Public Works at Athens.

In public works and other municipal activities the Greek cities forged ahead of their predecessors. This was due in part, no doubt, to the fact that money had come into wider use, displacing trade by barter. A great improvement in the tax system was thus made possible and the governing authorities were also enabled to utilize more effectively the revenues which came from taxation. It was a great misfortune, however, that after the destruction of Athens by the Persians in 479 B.C. the place was rebuilt in unseemly haste, without any planning. Hence the streets of the city were narrow, crooked, and badly maintained. Most of them were mere alleyways with scarcely room for a single carriage to pass. Carriages, by the way, were hardly ever used within the walled limits of the city. The Piræus was newer and better planned, with wider streets which crossed each other at right angles. Streets and roadways were rarely paved, and there were no sidewalks anywhere. There was no system of public lighting. Athens had the rudiments of a water supply system, the water being brought by aqueducts from brooks in the neighboring hills. It was piped to public wells and fountains, whence it was carried to the homes in large earthenware jars. Every house, moreover, had its cistern for storing rainwater. There were some public drains, but they were inadequate, and sanitary conditions in the city were always bad. The practice of throwing garbage into the streets served to make the highways "unsightly and unfragrant" as one writer has remarked. On the eve of any religious celebration or public procession the householders were required to clean "and level" the streets in front of

Water Supply.

Sanitation.

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[1] *Outline of History*, Vol. I, pp. 309-310.

their property. Aristotle mentions certain officials who, with the aid of public slaves, were entrusted with the function of keeping the street passable.[1] But they evidently did not make a good job of it, for Aristophanes (the George Bernard Shaw of antiquity) portrays his old, nearsighted Athenian groping his way along the roads, ankle-deep in mud and filth.

Public Safety.

Aside from public buildings and monuments there was no architectural magnificence in Athens. Houses and shops were miserable affairs of frame and mud-brick with flat roofs. The danger of fire being small, no regular system of fire protection was provided. The risk of destruction by the lawless elements was much greater, yet nothing akin to a modern police force was maintained. There was, however, a body of public slaves (chiefly Scythians) to whom certain police functions were entrusted. Their weapons were bows and arrows; their chief duty was to maintain order at public meetings, to eject obnoxious speakers, and to assist the work of the courts by acting as bailiffs or deputy sheriffs. They did not regularly patrol the streets. Being wholly unlighted, the narrow streets were infested with yeggmen and footpads by night. Education was not a public function in Athens nor was school attendance made compulsory; but the people set a high value on education (for men only) and there were private schools of all grades to which the boys were sent. In the wealthier homes there were slave tutors who did the teaching. Yet the Athenians, without state guidance, directed the education and physical training of the youth with a greater intelligence than any race preceding them. Athens was generous to the poor. Public granaries were established for the storing of grain and from these food was sold at cost, or even given, gratis, to the poorer citizens. The pauperizing effect of this practice was baleful although the evil never reached any such proportions as it did in Rome later on.

Schools.

Poor Relief.

The Athenian Revenues.

How did Athens obtain money for all these things? Partly from tribute, but chiefly from an elaborate system of taxation. Most of the taxes which are imposed by the modern city were utilized in Athens.[2] There were direct taxes upon property, and poll taxes, but they were not supposed to be levied except in emergencies. It was not until 378 B.C. that the property tax became stabilized; thereafter it was often assessed, for there was an almost continuous emergency. There were dock and harbor dues levied at the Piræus. There were special taxes upon aliens, customs duties (especially upon the importation of slaves) and octroi duties at the city gates. The Athenian treasury also derived a large annual income from leased lands and from mines belonging to the municipality. Tribute from allies and from tributary cities was exacted both in money and in produce, but chiefly in money. The courts, by their frequent imposition of heavy fines, brought in a considerable net revenue. One may find, in fact, an Athenian precedent for almost every expedient that the cities of the world have since adopted for raising money by taxation. The larger part of the revenue, however, was not collected by public officials but by the contractors who secured the privilege at auction. This led to much corruption and collusion, for wealthy men often made gentlemen's agreements to refrain from bidding against one another so that the tax might be let on easy terms.

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[1] A street commission of ten members which had general control of the construction and maintenance of the highways.

[2] There is a brief but useful account of Athenian taxation in William Cunningham's *Western Civilization in its Economic Aspects* (2 vols., Cambridge, England, 1898), Vol. I, pp. 112-120.

Athenian Expenditures.

Nevertheless the city treasury obtained very large sums from these farmers of the revenue. With reasonable economy this income would have been ample and should have enabled the Athenians to build up a wholesome and enduring community life. But the government of Athens, as time went on, became very extravagant and spent money lavishly upon public works of an unremunerative character. Even Pericles seems to have been possessed of the delusion (which has not perished even at the present day), that economic prosperity can be ensured by putting a lot of public money into circulation. In this way, rather paradoxically, the glories of Athens were among the causes of her eventual demoralization and decline. While vast sums were being spent upon temples and monuments, a large portion of the citizenship lived in want and squalor. Much of the city's wealth was also spent in war and in preparations for war, more in this way than upon buildings or monuments. The sovereignty of the people reflected itself in public waste on a large scale; that seems to be in all ages a characteristic of triumphant democracy. One might think that the first care of the *demos* would be for the comfort and prosperity of the humble citizen;

but the history of direct democracy does not indicate that this has been so.

Athens Idealized and in Actuality.

Even educated men and women of today have a very misleading conception of what ancient Athens, as a city, was like. They derive their impressions from what remains of Athenian art, sculpture, and public buildings. It is true that there were parks and pleasure grounds, squares and fountains, and some noble monuments. But these did not constitute the Athens of the Athenians. Visualize rather a city of mud houses, huddled together on narrow, twisting streets, many of them scarcely wide enough for a chariot to pass through. Think of one hundred thousand human beings packed into an area the walls whereof were only five miles in circumference, without an adequate water supply, without sewers, without effective police or fire protection, without schools or playgrounds, living from hand to mouth, many of them on the bounty of the city. So far as humane living conditions go the slums of Pimlico or Whitechapel are doubtless better off today than was the Collytus or favorite residential quarter of ancient Athens.[1]

A Contemporary Description of the City.

In the third pre-Christian century the critic Heracleides noted his impressions of the city. "Thence to Athens," he wrote. "The road is pleasant, the land all cultivated, the prospect inviting. The city is everywhere dry, water being scarce; and because of its age the streets and blocks are irregular. Most of the houses are mean, the nice ones few. A stranger would doubt, on seeing it first, if this were really the world-renowned city of the Athenians."[2] Then Heracleides proceeds to explain that after a visit to the great public buildings the visitor would be truly convinced. He speaks enthusiastically of the Odeum and the Parthenon, but also mentions the hunger among the people which "is obscured by the shows and entertainments open to the public which cause forgetfulness of the taking of food."

To the Athenian mind the history of the race began with the

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[1] Unhappily we do not know as much about this section of the ancient city as we would like to know, for the modern city covers the site and this has restricted the opportunity for making excavations. See also A. Winckler, *Wohnhäuser der Hellenen* (Berlin, 1868), and Robert Pöhlmann, *Die Uebervölkerung der antiken Grosstädte in Zuzammenhänge mit den Gesämmtentwicklung städtischen Civilisation* (Leipsic, 1884).

[2] This translation of the passage in the *Notes on Greek Cities* is taken from W. S. Ferguson's *Hellenistic Athens* (London, 1911), pp. 261-262.

An Active Cosmopolitan Place.

founding of the city. The Athenian citizen lived for his city and its service commanded his best thought and energy. To him the city meant all that city, state, and nation mean to us, and more besides. And well it might, for he was a citizen of no mean city, even though its houses were mean. Athens was "neither lawless, provincial, nor romantic." It was a community in which high-minded gentlemen mingled with a waspish populace, a place of constant gaiety and ever-threatening hunger, of sordid, dusty streets and noble public edifices, of good taste and critical acumen, of proud citizens and interloping aliens,—a very cosmopolitan place as great cities have been in all ages.[1] The Athenian was the first to raise politics to the rank of an art; he had political as well as artistic ideals. "We do not copy our neighbors," declaimed Pericles, "but are an example unto them." That was no idle boast. No people ever copied less, or in so short a time contributed more that was original, alike in art and in politics.[2]

The Greek Cities of the Near East.

The contributions of the Greeks to urban development were not restricted, of course, to Greece itself. When Alexander the Great proceeded to Asia he took with him the idea that Hellenic civilization and city life were synonymous. Accordingly he displayed a feverish energy in founding Greek city-states everywhere within the conquered area, particularly in those regions where urban life had hitherto been lacking. Seleucus also planted many Greek cities in the East, scores of them, especially in the Syrian region between the Euphrates and the sea. These great Macedonian captains seem to have believed with Aristotle that men who did not live in cities must needs be barbarians.[3] Much might be written of the metropolitan cities which flourished in the post-Alexandrian era, but this is hardly the place for it.[4] Taking them all together, their contributions to the development of municipal administration were far less than those of Athens alone.

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[1] *Ibid*, p. 263.

[2] J. P. Mahaffy, *What Have the Greeks Done for Modern Civilization?* (New York, 1909), especially Ch. vii (Politics, Sociology, Law).

[3] W. S. Ferguson, *Greek Imperialism* (Boston, 1913), p. 196.

[4] Material relating to them may be found in Julius Beloch, *Griechische Geschichte* (3 vols., Strassburg, 1893), Vol. III, Ch. vii.

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Monographs of special value are E. Curtius, *Die Stadtgeschichte von Athen* (Berlin, 1891); H. Blümner, *Leben und Sitten der Griechen* (Leipsic, 1887), translated under the title *Home Life of the Ancient Greeks* by Alice Zimmern (London, 1893); P. Giraud, *La vie privée et la vie publique des Grecs* (Paris, 1890); A. E. Zimmern, *The Greek Commonwealth* (Oxford, 1911); B. E. Hammond, *The Political Institutions of the Ancient Greeks* (London, 1895); Fustel de Coulanges, *La cité antique* (Paris, 1898); J. P. Mahaffy, *Old Greek Life* (New York, 1888); *Social Life in Greece* (London, 1898); and *What Have the Greeks Done for Modern Civilization?* (New York, 1909); C. B. Gulick, *The Life of the Ancient Greeks* (New York, 1902); W. S. Davis, *A Day in Old Athens; A Picture of Athenian Life* (New York, 1914); T. G. Tucker, *Life in Ancient Athens* (New York, 1921); W. Warde Fowler, *The City State of the Greeks and Romans* (London, 1908); W. S. Ferguson, *Hellenistic Athens* (London, 1911), and *Greek Imperialism* (Boston, 1913), and G. W. Botsford, *Hellenic Civilization* (New York, 1915).

CHAPTER II

ANCIENT ROME AS A MUNICIPALITY

Rome As a City.

Rome as a city was scarcely less wonderful than Rome as an empire. She was the largest, most populous, and best governed municipality that the world contained at any time during the first fifteen Christian centuries. Her fall was one of the great catastrophes in human history, how great one can faintly realize by recalling the fact that no city, for more than a thousand years after her collapse, managed to reach the point where Rome left off. When civilization crumbles it is the great cities that bear the brunt of the shock. It is there that the extent of the damage most vividly appears. The Russian peasant of today does not find that his methods of life have been greatly transformed by the collapse of the old régime; but in Moscow, Petrograd, Kiev and Odessa the change has been almost beyond the power of any pen to describe. And so the decline and fall of Roman power must have been far more poignantly felt in the cities and towns of Europe than in the rural regions. These Roman cities formed the vanguard of civilization; it was a black day in the annals of mankind when they wheeled about and began their long march to the rear.

The Beginnings of Rome.

Rome, as a city, had few natural advantages.[1] Her immediate physical environment was inferior to that of Athens,—a "pestilential region," Cicero called it. The valleys among her Seven Hills were little more than quagmires. The location was twenty miles away from the sea, and there were no great natural resources in the neighborhood—no mines as in Attica and no vast expanse of grain country round about as at Alexandria. The Tiber, so famed in song and story, was of no great value for navigation; on the other hand, it frequently overflowed its banks and inundated large portions of the city. But Rome at least occupied a good strategic position with reference to the developing lands of the whole Mediterranean region.

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[1] Livy's famous eulogy of the city and its site (Book V, 54) is mere rhetoric. With as good reason might an American orator wax rapturous over the site of Washington on the Potomac. There is reason to believe that the Romans themselves had frequent misgivings about the excellence of their location.

From Municipality to Monarchy, Republic and Empire.

The genesis of the city is known only through the classic legends.[1] As in the case of Athens it is probable that the initial step was taken by the consolidation of various small settlements into a unified city, primarily to ensure better means of defense. Rome, as every student of history knows, began as a monarchical city-state; but about 500 B.C. the monarchy was overthrown and a republic established. Under this republican organization the city rose to a position of great power, expanding her sway over practically the whole of the then-known world. Toward the beginning of the Christian era the republic gave way to an empire which continued until the occupation of its western half by the Germanic invaders in the fifth century A.D.

The expansion of Rome is a unique phenomenon in history, the development of a single city into a world empire. Like the expansion of England into the British Empire it was altogether unpremeditated and unplanned—the result of a long series of historical accidents. The *urbs* became an *orbs;* or, as Ovid says, "the boundaries of the city grew coterminous with those of the world." The process was begun by the forming of alliances with the tribes which inhabited the Italian peninsula; then through channels of conquest the Roman sway was extended to regions farther afield. These conquests, which resulted in enormous payments of tribute to Rome, had their natural reaction upon the city's prestige and prosperity, making it in time a great metropolis,—great even when modern standards of comparison are applied. There is no instance in history of a growth so relatively rapid and stupendous as that of Rome, or of a civilization so tenacious. Even today the contributions of Rome to literature, law, and government are exerting a profound influence upon the lives of men.

The Strictly Municipal Aspects of Rome's Administration.

One should not think of Rome as the capital of an empire in the sense that Paris is today the capital of a republic. The people of Paris and its neighborhood have no political privileges superior to those of the people who live in any other part of France. But Rome as a city, with the territory near by, was a corporate community which possessed special privileges and exercised sovereignty over territories and tribes elsewhere. For this reason we are too apt to think of Rome in her imperial aspects only, forgetting that Rome had also her strictly municipal activities and problems, as every great urban aggregation is bound to have them. She had problems of constructing and maintaining thoroughfares, providing water and sanitation, caring for the poor, affording facilities for public recreation, and preserving law and order. She had problems of congestion, housing, finance, and social welfare. She had her political factions, her rings and bosses, her patriots and reformers, her spoilsmen and grafters, her publicans and sinners—just as any modern metropolis has them.[1] A study of Rome in her municipal aspects can hardly be without some interest and value, therefore, for such light as it may shed upon municipal problems of the present day. It will at least disclose that many of these problems are by no means new.

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[1] It is narrated in the eighth book of the *Æneid.*

Her Population.

Rome's maximum population is not accurately known, and widely varying estimates have been made; but the best authorities now place it at about 800,000.[2] Gibbon set it at 1,200,000 in the time of her zenith, and figured the total number of

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[1] Their various operations are vividly described in G. Ferrero's *Characters and Events of Roman History* (New York, 1909), especially Ch. i (Corruption in Ancient Rome). See also F. F. Abbott, *Society and Politics in Ancient Rome* (New York, 1918), especially the chapter on "Municipal Politics in Pompeii."

[2] Curiously enough, no complete census of the *inhabitants* was ever taken. At regular intervals a census of the *citizens* was compiled but a large proportion of the population (how large we do not know) did not enjoy the privileges of citizenship. Likewise there was an enumeration of houses, both tenements and palaces, but not of their occupants. Estimates of the population have been made by calculating the habitable space within the walls or by figuring from the number of persons who were entitled to share in the free distribution of corn. Lanciani (*Ruins and Excavations of Ancient Rome*, p. 93) believes that "we cannot stray very far from the truth" if we place the population of Rome itself at 800,000 and add another 200,000 for the surrounding Campagna. The later cycles of Roman population are shown by the following table:

A.D. 335	350,000	1812	118,000
1377	17,000	1870	226,000
1527	55,000	1890	423.000
1639	114,000	1920	600,000

For a discussion of the figures see P. Castiglioni, *Della populazione di Roma, dalle origini ai nostri tempi* (Rome, 1878) and the discussion of "Der römische Census" in Julius Beloch's *Bevölkerung*, pp. 306-387.

houses at about 50,000, which would mean an average of more than 20 persons to each house. At any rate Rome was the largest city of antiquity, and although her population dwindled to less than a half million in the fourth century A.D., she remained the world's largest city for a long period thereafter.

Limited Area of the City.

The original site of the city was very small, but as the population increased the walls were extended until they surrounded an area of about nine million square meters. Nevertheless the population insisted on crowding toward the center because there were no means of transportation in and out.[1] So houses of a single story gave way to tenements often four or five stories tall. Land became very valuable and rentals high.[2] The site of Cæsar's forum is estimated to have cost a hundred million sesterces (over five million dollars).[3] The location for a city hall or auditorium in New York would hardly cost any more today.

The Congestion.

It is beyond question that ancient Rome was badly congested, probably more so than any city of modern Europe or America. Juvenal, it will be remembered, complained of the overcrowding as intolerable and urged the people to migrate from the center of the city outwards. In order to find space for the great public works and places of amusement considerable sections of the city were razed, and this made the congestion more acute in the adjacent regions. The lack of effective public sanitation must have made the overcrowding more irksome to everybody. Fortunately the habits of the people led them to spend the greater portion of their time out of doors, and this counteracted, in part at least, the unwholesome effect of the housing conditions. But this love of street life, which has not altogether departed from the Italians of our own time, led to so great a thronging in the thoroughfares that Cæsar found it necessary to issue an order prohibiting the passage of wagons through the central districts for ten hours after sunrise. Throughout the day hours, accordingly, there was no rattle of wheels in the Roman streets, but there was noise a-plenty from other sources, both night and day. The Roman did not go indoors except to eat and to sleep; when he had time on his hands he prowled about in the open, or went to one of the *thermæ* or public baths, where he might find his friends. There was no real home life among the plebeians.

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[1] Tacitus gives, as an additional reason, the desire of the people to avoid malaria which, he says, was less apt to attack those who crowded together in the city than those who lived outside the walls. He was no doubt right, although he and his fellow Romans had no conception of the true reason for the relatively greater immunity of the downtown folk, which was that malarial mosquitoes were more plentiful outside the city walls.

[2] Some information concerning the "crise de loyers" is given in Léon Homo, *Problèmes sociaux de jadis et d'à présent* (Paris, 1922).

[3] Robert von Pöhlmann, "Die Wohnungsnot in antiken Grosstädte" in his *Aus Altertum und Gegenwart* (Munich, 1911), p. 202.

Identification of City and State.

In Rome, as at Athens, no distinction was made between municipal and national government until the time of Augustus and even thereafter the distinction was not well defined. A relatively simple political organization, adapted to the needs of a small community, was elaborated by the addition of new administrative machinery until it served not only for the city but for a vast tributary domain. It was never completely recast to meet the new conditions, and in becoming a world-empire Rome never wholly sacrificed her original organization as a city-state. The Romans were a matter-of-fact people, and opportunist in their political methods; they abhorred theories of government and met each problem as it came, usually by adding some new political machinery to what they already possessed. Augustus, for example, appointed a *præfectus urbi* who became head of the city whenever the emperor was absent, and this office later became permanent. With the growth of territorial interests, however, the government of Rome lost much of its local character and its later development possesses little interest for the student of municipal institutions, however instructive it may be for the student of law, imperialism, or colonial administration.

The Street Plan of Rome.

Let us glance for a moment at the administration of the city as it existed during the heyday of Roman power, the period from about 100 B.C. to about 200 A.D. The city grew up in its earlier days without any planning of streets or strict regulation of building lines, and this haphazard lay-out proved a great handicap during the whole of the republican period. Broad thoroughfares like the Flaminian Road were quite exceptional. It was not until after the Neronian fire that the authorities took any tangible interest in the width and arrangement of the municipal highways. This is the more surprising in view of the care and intelligence bestowed upon roadbuilding outside the city. But Rome did many things better abroad than at home. In tracing the new streets and avenues through the ruins after the fire the imperial surveyors tried to run straight lines and

Width and Arrangement.

to use the right angles, but their freedom was hampered by the hilly nature of the ground. At best all ancient streets were narrow. The principal streets of Pompeii, as the uncovered ruins prove, were a little over twenty-five feet in width; in Rome they were no more spacious, and some of the side streets were mere passageways only seven or eight feet wide. From the surface of these narrow alleyways the high buildings shut out most of the sunlight.

Pavements.

Some of the streets were paved, but only in the center. At either side were unpaved ditches which served as gutters and speedily became filled with filth in dry weather. In paving the center of the street the Romans sometimes used blocks of hewn stone but more often slabs of lava quarried from the abundant deposits in the neighborhood. From all accounts this pavement was neither very smooth nor safe to walk upon, and as it was never cleaned except at long intervals, it became encrusted with a layer of mud and refuse. Until after the great fire, moreover, it was the custom of builders to encroach on the street whenever opportunity arose. New building rules were then promulgated and one of these rules provided that no structure should be erected until its frontage line had been approved by the authorities. Another stipulated that no private building should be more than twice the height of the street on which it fronted. Word for word that is the law in some American cities today.

The Housing of the People.

There were two types of houses, the tenements (*insulæ*) in which several plebeian families lived, and the palaces (*domus*) which the wealthy occupied by themselves. At one time the city had 1790 palaces and 46,602 tenement houses.[1] In the tenements the ground floor was generally used as a shop; one group of tenants occupied the second story; another the floor above, and so on. Vitruvius describes the tenements as being erected with stone foundations and framework, with walls of sun-dried brick. They were usually built as investments by men of wealth and were often called by the names of their owners. Cicero, in one of his letters, incidentally mentions that he was a tenement-house owner and adds that some of his buildings sorely needed repairs. Because of the congestion and the costliness of ground, the *insulæ* were reared as high as possible, often four or five stories, and owing to flimsy construction their collapse was a common occurrence.[1] Augustus promulgated a new rule that no private structure should be higher than seventy feet, and Trajan tried to lower this limit to sixty feet. The tenements were built around an inner court, and on the ground floor there were no windows opening to the street. To walk down a residential thoroughfare was like passing between two old-fashioned garden walls.[2] In the business section, however, the shops and stores stood open at the front during the day, but they were tightly barricaded with shutters at night.

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[1] R. Lanciani, *Ruins and Excavations* (Boston, 1897), p. 561.

Water Supply.

The water supply of Rome was remarkable in its modernity. Frontinus describes a dozen aqueducts varying from seven to fifty-nine miles in length, most of them underground.[3] These aqueducts were supplied with spring water from basins and reservoirs built in the hills. The water was not piped into the homes of the people but was brought to fountains from which the inhabitants carried it to their houses. At the time of the Emperor Constantine there were 247 reservoirs and 1212 public fountains scattered throughout the city. There are few subjects connected with the municipal services of Rome of which we have so comprehensive a knowledge as the water supply. Both Vitruvius and Frontinus have left us much information about it—the latter was in charge of the aqueducts, reservoirs and fountains during the latter years of the first Christian century.[4] It is estimated that the capacity of all the aqueducts was about seventy-five million gallons per day, but a considerable portion of this was used for irrigating the fields of the Campagna.[5]

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[1] They were called *insulæ* (islands) because they usually had narrow streets or passageways on all four sides of them. In Pompeii houses of more than one story were the exception. It is probable that the conditions in Rome were not duplicated anywhere else.

[2] Ludwig Friedländer, *Town Life in Ancient Italy* (Boston, 1902), p. 5.

[3] See Vol. II, ch. XXIX.

[4] Frontinus, *De Aquis urbi Romæ*, translated under the title *The Two Books of the Water Supply of Rome* (Boston, 1899), by Clemens Herschel.

[5] We do not know how much water the aqueducts supplied to Rome, even though there is an elaborate discussion of the matter in Frontinus. This is because the author gives his statistics in *quinariæ* and there is a wide difference of opinion as to whether a *quinaria* was 5000 gallons, or 25,000 gallons, or something between the two. Those who are interested in the problem will find it dealt with at length in the chapter on "Measuring Water" which accompanies Herschel's translation of Frontinus. It is highly improbable that the total supply exceeded seventy-five million gallons

Even with all due allowance for this outside use the per capita water consumption of ancient Rome must have been as large as it is today in many European cities. What is more, the Roman householder got his water free.

Sanitation.

Arrangements for public sanitation were by no means so satisfactory. What the arrangements were for the scavenging of refuse and garbage we do not know. The work was doubtless performed by public slaves under the supervision of the *ædiles* and evidently not well performed. The street was a dumping ground for household wastes of every type. To draw the stagnant waters from the neighboring swamps and marshes many open drains were constructed and these served to carry away the city's sewage as well. Some regular sewers were also built, among them the *Cloaca Maxima* which passed under the Forum to the river and is still in use, although it bids defiance to the sanitary principles of today. These *cloacæ* carried surface water and sewage together, emptying both into Father Tiber which served as the cesspool of Rome for nineteen centuries. They were built of brick and of stone blocks. Very few private houses were connected with the sewers, which served for the most part only the public buildings and palaces. Openings into the sewers were made at intervals along the streets and from these the stench exuded during the hot days and nights of summer. It would have been intolerable but for the fact that the frequent heavy rains and the steep gradients combined to keep both streets and sewers well flushed.[1]

Public Baths.

But if the sanitation of private houses received very little attention, Rome was famous for its public baths, of which there were many hundreds, most of them free to the people. These *thermæ* were kept warm during the cold weather and became places of public rendezvous where great numbers of people lounged about for hours at a time. The baths were the popular clubs of Rome, and as such they played an important part in the

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per day and of this about a third was used outside the city. The estimate of 332,000,000 gallons daily, given by S. R. Forbes in his *Aqueducts, Fountains and Springs of Ancient Rome* (Rome, 1899), p. 39, is absurdly high. It may be mentioned that the daily water consumption of modern Rome is less than seventy-five million gallons.

[1] There is a rather rambling chapter on "Sanitary Conditions of Ancient Rome" in Lanciani's *Ancient Rome in the Light of Recent Discoveries* (Boston, 1888), pp. 49-73.

daily life of the people. During the republican era the work of building baths, streets, bridges, temples and all other public structures was largely performed by private contractors, some of whom made large fortunes out of it. This general use of the contract system is said to have been due to the fact that the public officials held office for such short terms that there could be no continuity of official effort.

Street Lighting.

Rome had no system of street lighting. People took advantage of the moonlight at times; but on half the nights of the year they found the streets in utter darkness. Only on the occasion of great public festivals was there a general street illumination. People of the lower classes, when they ventured forth into the streets on dark nights carried lanterns, while the well-to-do hurried along with slaves carrying lighted torches in front of them. So precarious were the conditions of public security, and so great the audacity of burglars, that all the windows facing the street were bolted down at night, and often protected by railings,—a custom which prevails down to our own day and which gives the stately palaces of modern Rome the grim aspect of prisons.[1] All public functions, of whatever sort, were held during the daylight hours; people did not venture forth by night save on occasions of great urgency. This was partly because of the risk of assault or robbery but also because the "night air" was deemed to be pestilential, which in truth it was since the malarial mosquitoes were more in evidence after the sun went down.

Police and Fire Protection.

Rome was the first city to provide an organized system of police and fire protection, these two services of protection being performed by the same force. Augustus created this organization which contained 7500 men, divided into seven battalions, each with its headquarters in a different part of the city. A *præfectus,* appointed by the emperor, was at its head; he not only commanded the force but tried the offenders who were arrested. The men were trained in military fashion and were to all intents soldiers. Apart from vessels for carrying water they had no apparatus for fighting a conflagration. Evidently they were not very effective either in quenching fires or in repressing crime; at any rate Rome bore a poor reputation for guarding private property. The Roman citizen, Cicero boasted, could venture to the uttermost corners of the earth unharmed, but in Cicero's day and for many years thereafter he was by no means safe from assault and robbery in his own bailiwick. The magic *civis Romanus sum* did not there protect him from losing his purse or his mantle to the thug. Rome policed her outlying provinces better than her own municipal highways. This was because the congestion in the city, which made some parts of it resemble a giant ant-hill, rendered the operations of the criminal easy and his detection difficult.

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[1] R. Lanciani, *Ancient Rome* (Boston, 1888), p. 208. This volume contains a chapter on "The Police and Fire Department of Ancient Rome," but very little of the discussion has to do with either police or fire protection.

Public Recreation.

It was in the construction and maintenance of facilities for public recreation and amusement that Rome's municipal enterprise found largest scope. There were extensive public parks, athletic fields (*campi*), and public squares. A modern city deems itself fortunate when ten per cent of its entire area is devoted to parks, open spaces and other places of recreation. In Rome the percentage of open area was much higher than this. There were circuses and stadia and the Coliseum. The *Circus Maxima* accommodated 150,000 people, which is a larger number than the largest of our athletic bowls or amphitheatres can seat to-day. In these places of public rendezvous the great spectacular exhibitions of every sort were held. Temples there were also, and monumental buildings of many types, not to speak of walls and fortifications, arches, gates, towers and columns. The amount of labor and public funds expended upon these edifices and works of adornment must have been enormous. The world went hungry in order to do it. Lanciani estimates that hardly one ten-thousandth part of this mass of public structures has been preserved; the rest has long since crumbled into dust and rubbish with a new city built over it. The street level of ancient Rome, by the way, lies from five to sixty feet under that of the present Italian capital.

Education.

The Romans do not appear to have believed in education as a public function. There were no public schools in the modern sense. The rich secured private tutors for their sons; the children of the poor were sometimes sent to private institutions, but many of them obtained little or no education at all. We know, nevertheless, that even the children of slaves did not always grow up illiterate, for some of them performed in later life work which required a considerable proficiency with the pen. In a way the city assisted education, for it exempted teachers from all public burdens. During and after the reign of Augustus the city maintained several public libraries in which the number of manuscript volumes is said to have totalled several hundred thousand.[1]

Poor Relief.

In Rome as at Athens the amount of attention given to poor relief was noteworthy. The needs of the poorer classes as respects meat and fats were very small, for the Romans were almost entirely vegetarians; but their vast numbers created a serious problem of subsistence. It has been figured that Rome, in the days of Cicero, consumed about a million bushels of wheat each month.[2] Most of this had to be brought all the way from Spain, Gaul, Sicily, Sardinia, or Africa. It was not surprising that the city should take charge of the food situation and appoint officials to see that an adequate supply was forthcoming. Down to the time of Augustus this was the work of the *ædiles*. The practice of buying grain and either selling it to the poor cheaply, or distributing it gratis, was started by wealthy individuals who sought to make themselves popular with the people and thereby to gain political advancement. Then, in times of scarcity, the public authorities were persuaded to adopt the practice of distributing grain at cost. Since much of it came as tribute from the provinces the people soon got the idea that it did not cost the city anything, and that it should therefore be distributed free. So free grain was the next step.[3] For a time the grain itself was distributed monthly leaving the recipients to grind it and do their own baking. Then municipal ovens were built and bread was given out daily. Meat also was passed out to the people at the public expense. Gibbon estimates that the distribution amounted to more than half a million pounds per month, which is rather surprising in view of the small part that

Demoralizing Influence of the System.

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[1] See the chapter on "The Public Libraries of Ancient and Mediæval Rome" in Lanciani's *Ancient Rome in the Light of Recent Discoveries* (Boston, 1888), pp. 178-205.

[2] W. Warde Fowler, *Social Life at Rome in the Age of Cicero* (London, 1908), p. 35.

[3] Gibbon says that this step was the work of an organization headed by Cæsar, Crassus, Pompey and Clodius which we may not unfairly describe as the Tammany Hall of antiquity. *Decline and Fall*, Vol. I, p. 333.

meat played in the daily diet of ancient peoples.[1] Wine and olive oil were never distributed without money or without price, but they were sold at very low rates.[2]

Its Political Effects.

All this largesse had a pauperizing and demoralizing effect. It debauched the whole political system. Demagogues who promised more grain and meat for everybody gained the ear of the people. Corn and politics were as closely allied as cotton and politics during the years preceding the American Civil War. The popular demand for foodstuffs, inspired by the policy of free distribution, became steadily greater, and in order to supply it the authorities were forced to keep augmenting the amount of tribute exacted from dependent territories until the assessments in grain, cattle, wine and oil became heavy beyond endurance and led to revolts in the provinces. Even the merciless publicans whose duty it was to gather the taxes and tribute could not rack enough from the provinces to feed the city and enrich themselves at the same time. There are many reasons for Rome's decline as a metropolis, but not least among them was the fact that the surplus food supply of a large area did not suffice to keep several hundred thousand proud Romans in idleness.[3] Augustus attached the feeding of Rome to Egypt alone, and so it remained till the founding of Constantinople. This, apparently, relaxed the strain somewhat. Nevertheless the later history of Rome affords an illustration of the mischief that can be wrought by a system of undiscriminating "outdoor relief." To make matters worse, vast hordes of Roman officials were loaded upon the hapless provinces where, like a plague of locusts, they blasted the productive power of the lands. When Rome became a parasite the world grew tired of her sway and cast it off. It is small wonder that the people of the imperial provinces sometimes extended a welcoming hand to the barbarians.

The Civic Revenues of Rome.

The enormous revenue which Rome required each year was derived from many sources. Some of it came from the earnings of public buildings and public baths, from toll-gate fees and from assessments upon public officials. There were income taxes, and at times there were levies on capital.[1] There were customs duties on all goods coming into Italy. Large incomes were derived from the rental of public lands and at times from taxes on private land. Fines and confiscations brought in large sums. Poll taxes were not levied in Rome. A fruitful source of revenue was private generosity, many gifts, bequests and legacies being made to the city. The heaviest items of expense were the maintenance of the military and civil establishments, the erection and preservation of buildings, the care of public grounds, the providing of public amusements, and the purchase of food for distribution to the people. The big items in the budget of the modern city such as interest on the public debt, expenditures for education, police and fire protection, street lighting, and the protection of the public health—these did not bulk large in the annual expenditures of ancient Rome.

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[1] Gibbon, *Decline and Fall*, Vol. II, p. 837.

[2] The "high cost of living" was an urban problem even in Roman times. See the chapter on "Vie chère" in Léon Homo, *Problèmes sociaux de jadis et d'à présent* (Paris, 1922).

[3] In Cæsar's time no fewer than 320,000 people were participating in the free distribution of grain. This must have been at least forty per cent of the population.

Expenditures.

The Provincial Cities.

Throughout the territories dominated by Rome there were many cities, some of considerable importance. Gibbon refers to them as running into the hundreds, but he is using the term "city" in its customary ancient sense, that is, to include even small villages populated almost entirely by agriculturists. When we speak of the ancient world as a world of cities this does not mean that it was a world of industry and commerce. Much of the agricultural population lived in the towns; it was certainly safer and more convenient for anyone to live there if he could. Concerning these numerous cities we know relatively little, however, for the provincial communities did not interest the Roman chronicler. The entire range of Latin literature affords but few and transient glimpses of life in even the largest cities outside Rome, whether in Italy or in the provinces.[2] Nevertheless some of the leading cities of modern times were important centers in the days of the Cæsars. Among them are London, Milan and Padua, Marseilles, Bordeaux, Toulouse and Lyons, Vienna and Cologne, Constantinople and Smyrna, Salonica and Alexandria.

Under the republic the provincial cities were given a varying

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[1] There is a discussion of these "Impôts sur le capital et sur le revenu" in Léon Homo, *Problèmes sociaux de jadis et d'à présent* (Paris, 1922).

[2] J. S. Reid, *The Municipalities of the Roman Empire* (Cambridge, England, 1913), p. 2.

Their Government.

measure of independence according to whether they were rated as *civitates, coloniæ,* or *municipia.* Some of them elected their own officials, including magistrates (*duumvirs*) and administrative chiefs (*ædiles*), the latter having supervision of the streets, public buildings, baths, and markets.[1] Eventually all the provincial cities were placed upon a common basis; they ultimately became mere administrative districts, their affairs largely controlled by appointive imperial officials known for a time as *curatores.* At the outset the curator was merely a financial supervisor sent out from Rome, but later he was turned into a regular municipal administrator, chosen by the emperor from among the citizens of the municipality—a sort of appointive mayor. The magistrates and senates of the provincial cities, moreover, were ultimately made responsible for the collection of taxes and this gave the imperial authorities an easy pretext for cutting further into municipal independence. With this loss of local autonomy came a greater disinclination of the citizens to serve in subordinate public office. Men avoided it whenever they could, for the "honorarium" which they had to pay was heavy. Thereupon office-holding was made compulsory; but in the fourth and fifth centuries A.D. even this did not always avail. Newly-elected city councillors often fled to the desert or to the monasteries to avoid service. These were indications of a decline in the civic spirit of the people. The whole municipal system, so vigorous in its earlier days, became emaciated and spiritless. In the sixth century Theodoric the Ostrogoth tried to revive and strengthen what was left of it, but he was too late. The agricultural population had begun to migrate from the "cities" and this exodus could not be stemmed. The Roman municipal system was being swallowed in the Dark Ages.

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[1] "To hold office the candidate must be freeborn, of irreproachable name, at least twenty-five years of age, and possess a certain income; he must also show that he is not carrying on any improper business. . . . It was necessary to take office in the strictly legal order, beginning at the lowest and rising, if one aspired to the higher grades. No one could hold the same office twice unless after an interval of five years. . . . Custom, and sometimes specifications in the laws, forced those who were elected to undertake certain things for the good of the community, for example, the erection of public buildings or the holding of games; they were, besides, expected to contribute to the city treasury a certain amount as an honorarium, which was based upon the size of the city and the grade of the office." Ludwig, Friedländer, *Town Life in Ancient Italy* (Boston, 1902), pp. 14-15.

Public Works in the Provincial Cities.

In point of municipal services the larger communities endeavored to imitate Rome but of course on a smaller scale.[1] There was the same tendency toward extravagance in public works and grain distribution, the same absence of care for health and sanitation. Every ancient city was anxious that its public buildings and monuments should be better than those of its neighbors, and this rivalry drew all of them into expenditures far beyond their resources. The ruins of these structures in provincial towns prove them to have been out of all keeping with the size and population of the place. Another great extravagance was the incessant trip-making of the officials. "Every event in the history of the imperial family was marked by a stream of envoys to Rome from the most distant towns of the empire." The American alderman is not a pioneer in the matter of municipal junkets.

The Idea of a "Municipal Corporation."

One great and enduring contribution, however, was bequeathed by Rome to the science of municipal government. In the course of her relations with the provincial cities Rome evolved the concept of the municipal corporation. The Romans were the first to develop in a large way the legal idea that a body of men might be clothed with a *corporate* personality, thus becoming a corporation or artificial person at law. This idea they applied to the provincial cities, which became municipal corporations with the right to hold property and to sue or be sued in the courts. In the methods whereby these corporations were brought into existence through action of a higher authority, in their right of perpetual succession, and in their responsibility for the torts of their officials there is a striking analogy between the Roman concept of a municipal corporation and that which exists in America today.[2]

The Decline and Fall of the Ancient City-States.

The decline of the ancient city-state, Athens and Rome alike, was due to various causes, both internal and external. Within the cities the great and constant source of weakness was what the Greeks called *stasis* or factional strife. The rich and the poor were continually becoming embroiled. This factional bitterness was so prevalent that Aristotle devoted a whole book of his

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[1] J. S. Reid, *The Municipalities of the Roman Empire* (Cambridge, England, 1913).

[2] John F. Dillon, *Commentaries on the Law of Municipal Corporations* (5th ed., 5 vols. Boston, 1911), Vol. I, pp. 3-4.

Politics to analyzing it. He concluded that it might be avoided by a more nearly equal distribution of wealth and by universal political education. But save in a very limited circle there was never any real civic introspection, any study of government and administration as a science. Rome, until disaster came, never made any thorough examination of her problems as a great city, never undertook to reconstruct and simplify a cumbrous political organization which had become top-heavy by accretion during a half dozen centuries.

Yet the art of public administration owes more to the genius of Rome than most of our contemporaries realize. As a ruler of men the Roman was superior to all who went before and to most of those who have come after him. He was, as Dante says, by nature ordained for sovereignty and lived up to what his poets claimed for him. "Verily that others shall beat out the breathing bronze more finely, I grant you; they shall carve the living feature in the marble, plead causes with more eloquence, trace the movements of the heavens with a rod, and name the rising stars; but to thee, O Roman, be it given to rule the peoples with authority; be thine arts these, to teach men the way to peace, to show mercy to the subject, and to overcome the proud."[1]

REFERENCES

There is, so far as I am aware, no printed study of ancient Rome as a municipality although many books contain scattered material relating to municipal life and functions. Among these the most useful are Rudolfo Lanciani, *Ancient Rome in the Light of Recent Discoveries* (Boston, 1888), and the same author's *Ruins and Excavations of Ancient Rome* (Boston, 1897); Samuel Dill, *Roman Society from Nero to Marcus Aurelius* (London, 1911), especially pp. 196-350; Ferdinand Béchard *Le droit municipal dans l'antiquité* (Paris, 1860); F. F. Abbott, *Roman Political Institutions* (Boston, 1891), *Society and Politics in Ancient Rome* (New York, 1918), and *The Common People of Ancient Rome* (New York, 1911); W. Warde Fowler, *Social Life at Rome in the Age of Cicero* (London, 1908); A. H. J. Greenidge, *Roman Public Life* (London, 1901); E. H. Oliver, *Roman Economic Conditions* (Toronto, 1907); Tenney Frank, *An Economic History of Rome to the End of the Republic* (Baltimore, 1920); T. G. Tucker, *Life in the Roman World of Nero and St. Paul* (London, 1910); Léon Homo, *Problèmes sociaux de jadis et d'à présent* (Paris, 1922), and K. Hoffmeister, *Die wirthschaftsliche Entwickelung Roms* (1899).

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[1] Vergil's *Æneid* VI, 847.

Books of more special scope are Robert Pöhlmann, *Die Ubervölkerung der antiken Grosstädte* (Leipsic, 1884) and the chapter on "Die Wohnungsnot der antiken Grosstädte" in his *Aus Altertum und Gegenwart* (Munich, 1911); A. Leger, *Les travaux publics . . . au temps des romains* (Paris, 1875); F. A. Choisy, *L'art de bâtir chez les romains* (Paris, 1873); Frontinus, *The Two Books of the Water Supply of Rome* (tr. Clemens Herschel, Boston, 1899); and S. R. Forbes, *The Aqueducts, Fountains and Springs of Ancient Rome* (Rome, 1899); Vitruvius, *The Ten Books of Architecture* (tr. Morgan, Cambridge, Mass., 1914); and F. J. Haverfield, *Ancient Town Planning* (Oxford, 1913).

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CHAPTER III

THE CITIES OF MEDIÆVAL EUROPE

Early Mediæval Chaos.

The collapse of Roman power demoralized the whole of western Europe. The tribes from the north and east which overran the imperial territories destroyed a large portion of the municipal structure which had been built by the genius of Rome during ten centuries and they had nothing to put in its place. They were unacquainted with cities and with the art of governing them. They disliked urban restrictions and confinement. The Roman empire in its dying hours bequeathed to the early Middle Ages a goodly number of cities and towns;[1] but in the chaos which the barbarians brought with them the old municipal régime vanished. No one seemed to be interested in preserving it.

What Became of the Roman Provincial Cities?

What became of the cities? Many were pillaged, ruined and depopulated. They dwindled to small villages and in some cases were effaced altogether.[2] Others were captured by the invading chiefs and held as their patrimony, becoming parts of their ducal or baronial domains. Many cities owed their immunity from pillage and the preservation of their political organization to the restraining influence of the Christian church. During the declining days of the Roman empire the bishops and other church officials had risen to a prominent place in the government of these cities. Often they had taken over the functions of the Roman curator and virtually displaced the old civilian authorities. This proved very fortunate for the cities during the chaos which followed the barbarian inroads, because the leaders of these tribesmen respected the Church when they showed little respect for anything else that was Roman. The bishop became lord of the town, its suzerain and protector. In this way many of the old Roman cities in France and along the Rhine became episcopal municipalities—Tours, Amiens, Cologne, Treves, and Laon are examples. The bishops proved themselves good administrators. In education they were far superior to those surrounding them. They had some knowledge of law and government. And they were able to exact from the citizens a measure of obedience which civil authorities could not have secured.

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[1] There were 112 cities in Gaul during the later Roman period. A. Giry and A. Réville, *The Emancipation of the Mediæval Towns* (New York, 1907), p. 1.

[2] Tacitus wrote of London as a place "particularly famed for the number of its merchants and the extent of its commerce." Many traders from Italy and other parts of the empire established themselves there. J. S. Reid, *The Municipalities of the Roman Empire* (Cambridge, 1913), pp. 228-229. But within fifty years after the Romans left Britain, the town on the Thames was a heap of ruins, its people scattered, its trade gone, and even its streets blotted out. Not for centuries did London become the town that it had been in the time of Claudius. Other thriving Roman cities in Britain were wiped off the map; even their exact locations were in doubt until excavations during the nineteenth century determined them. Somewhere on the Straits of Dover was a flourishing Roman city, often referred to in classical writings as the Portus Itius. It disappeared in the early Middle Ages, and so completely that scholars cannot even agree on its probable site. The same is true of Tauroentum which stood on the coast of Provence. Other instances might be given, scattered all over western Europe.

We know little concerning what went on in the struggling cities of western Europe during the period from the fifth to the tenth century. Everywhere the towns declined in population and importance; the details of their vicissitudes are unmentioned in the meager records of the period, but the general causes of the universal retrogression are well enough known. The old Roman tradition of municipal autonomy everywhere passed away; the towns went into bondage. At the best the townsmen were able to huddle together in precarious safety under the shadow of cathedral or abbey; at the worst they became the prey of some plundering baron who extinguished the last vestige of their ancient liberties.

The Economic Collapse.

The economic collapse was so complete that it severed all the arteries of commerce. Rome had built up a great system of trade communications, but this now crashed to the ground, and the cities found their chief source of prosperity taken away. Many of them had been centers for the collection of tribute; others had carried on a lively trade with Rome; others had been garrison towns. But there was now no longer any tribute to be gathered; the seas became so infested with pirates, and the great Roman roads so impassable and so beset with bandits that not even the most venturesome traders would have dared to use them. Rome had been the pivot of the old economic system. All inspiration had radiated outward from the City of the Seven Hills. With the hub broken, the spokes of the wheel fell apart. It could no longer be said, as of old, that all roads led to Rome. The mediæval roads led nowhere.

The Causes of Municipal Stagnation.

For several centuries following the great catastrophe there was complete stagnation in municipal life. Outside the immediate precincts of castle and monastery all life was uncertain. The masses of the people were reduced to serfdom and forced to sweat out their living by hard toil in the fields. Banditry and pillage went uncontrolled and unrebuked save where the Church could hold them in check. The old saying, "There is good living under the cross," attests the popularity of the Church-governed towns. In the misty centuries from 500 to 900 no European city made any substantial progress or gained in population. Rome herself dropped in population from a great metropolis to a mere wraith of her ancient glory. Pillage, famine, barbarian oppression, earthquakes, floods, misgovernment—and sometimes no government at all—brought the proud capital almost to extinction. When the Papacy came back to Rome in 1377 after its exile at Avignon there were but 17,000 people to welcome the restoration.[1] Constantinople was the only city in Europe which at this time had a population of more than 100,000. Other cities such as Paris and Bordeaux destroyed their outer suburbs so as to have a smaller area to defend; they built walls and crowded their diminished populations within the embattled enclosures. During all these years the two prime essentials of city growth were entirely lacking, namely, a strong central government able to afford protection against oppression, and an expanding system of industry and trade. Without law and order, without industries or trade, the cities could not grow. Each community lived to itself, supplied its own needs, bought little from its neighbors. Here and there, under the sheltering ægis of an abbey, the townsmen established a market. Some of the barons, too, extended their protection to markets and fairs within their domains, because they found this to be a practicable way of getting revenue; but few of these markets were of more than local importance.

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[1] Rudolfo Lanciani, *The Ruins and Excavations of Ancient Rome* (Boston, 1897), p. 93.

The Municipal Renaissance.

Beginning with the eleventh century, however, city life began to show signs of revival. These indications appeared, first of all, in the cities of the Mediterranean area, particularly in those of Italy, for here some commerce with the east had survived the barbarian incursions. Throughout the Dark Ages some trade had continued to flow along the northern Mediterranean shores; the old commercial intercourse between Italy, Greece and the Near East was never entirely broken, although it dwindled to a small fraction of what it once had been. Amid the almost complete annihilation of commerce elsewhere the Italian cities continued to preserve a small portion of their ancient prosperity. The Crusades, when they came, gave new impetus to the trade of these eastern Mediterranean areas. They stimulated in the west a demand for eastern luxuries, and above all they widened the horizon of Europe. Florence, Venice, Genoa, Pisa, Leghorn and the other Italian cities now took advantage of their opportunities and developed important industries, the products of which they marketed in the coast towns of other lands. With this economic renaissance came a restoration of their own political independence, and these Italian communities presently became autonomous city-states with governments under their own control.

1. In Italy

Some of them set up a consular form of government, akin to Roman republicanism.[1] Executive power was entrusted to a body of consuls, usually ten to twelve in number. These consuls were chosen by a complicated process in which appointment, election, and choice by lot played about equal parts. Assisting the consuls were councillors, from twenty-five to one hundred in number according to the size of the city. These *sapientes* were chosen in the same manner as the consuls. Ordinarily the consuls and the council managed the city's affairs; but when very important matters came to the front for decision it was customary to convoke the *parlementum* or general assembly of all the citizens. The range of citizenship was narrow and included only those who were members of the nobility or connected

Government of the Italian Towns.

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[1] This was not, however, the resurrection of a Roman institution, for no traces of the old Roman tradition had survived in these cities. Some writers have been misled by the use of the terms *consul*, *sapientes*, *municipium*, and so on, but terminology is not a safe guide in tracing the ancestry of institutions. New institutions have often been christened with old names.

with the city gilds.[1] In some of the cities this consular government degenerated into an oligarchy and the contest between rival oligarchic factions kept the place in a continual turmoil. Commercial competition between the cities, moreover, led to intermittent warfare with the result that certain of them passed under the domination of others. But whatever degree of autonomy these cities managed to retain they seldom claimed complete independence from the authority of emperor or king. They were far more interested in commerce than in politics and willing to brook political trammels if they could only be free from commercial restrictions.

Their Size and Services.

These cities of mediæval Italy were never very large. Florence, the most populous among them, did not possess at any time a population exceeding 100,000. Their streets were narrow, irregular, and congested. Rarely was there any provision for public water supplies or for sanitation. The larger part of the public revenue was spent on works of adornment, on the improvement of trading facilities, and on the maintenance of armed forces for defense. No Italian city of the twelfth or thirteenth century was as well equipped with municipal services as Rome had been ten centuries before.

2. In Germany.

Meanwhile a somewhat similar revival of municipal life was proceeding in the northwestern portion of Europe. About the end of the tenth century feudalism became well anchored in these northern regions. The lords established within their domains a reasonable degree of security, and the anarchy of the earlier centuries disappeared. Markets were now more freely opened and trade was extended from town to town. When conditions had become fairly stabilized in these regions through the spread of feudalism, maritime commerce once more began to develop, especially at the seaports and in the towns along the rivers. Merchants and traders now began to venture away from the shelter of the city walls; the towns of the Rhine sent their merchandise to the Baltic, to England, and even to the Mediterranean. With this broadening of trade the cities took on an air of progress; peasants began to flock in from the country; the urban populations increased and wealth accumulated.

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[1] There is a good chapter on "Elections and Democracy in the Middle Ages" with special reference to Italian and German cities, in Charles Seymour and D. P. Frary, *How the World Votes* (2 vols., Springfield, 1918), Vol. I, Ch. ii.

Rise of the Hanse Cities.

As elsewhere, these cities of northwestern Europe had been, since the breakdown of Roman influence, under the domination of some bishop or lord. Their burghers had no political rights. The lord or his deputy ruled them, taxed them, and haled them before his court. This baronial oppression was endured in silence so long as the towns were poor and weak, but with the growth of commerce and wealth there came a demand for municipal freedom. During the eleventh century this struggle for freedom from episcopal and baronial control began, and during the twelfth century it continued, the cities being sometimes aided in their fight by the crown which was now seeking to control the power of the feudal magnates. In the end most of the northern communities gained complete independence, subject only to the shadowy supremacy of the emperor, and became Free Cities. The list comprises Hamburg, Bremen, Lübeck, Frankfort, Dantzig and the towns of the Rhine Valley, including Strassburg, Mainz, and Cologne. The paths of emancipation followed the great commercial currents of the time.[1] Having gained their freedom these cities joined themselves into leagues or alliances, the best known among which was the Hansa or Hanseatic League of the thirteenth and fourteenth centuries. It embraced all the important cities in northern Germany and the Baltic region; it had a central council in which each city was represented, and a common treasury to which each contributed. The League also maintained a navy for the joint protection of its members.

Government of the Free Cities.

The political framework of the mediæval German city was not widely different from that which the Italian city set up during the same period. It had an elective burgomaster (sometimes three or four of them), a senate, and a larger council. But in the north, as in the south, the power which had been assumed to rest with the people gravitated into the hands of the merchant aristocracy. This control was rendered more effective by the organization of the traders into gilds or commercial corporations. With the growth of industry the artisans also organized their gilds. Sometimes the latter displaced the merchant gilds in control of municipal affairs; more often the two elements combined to exercise this control. Both the senates and the larger councils passed under their sway; the gilds formed a governing class from which all the officials were selected. The city's chief interests were in trade and industry; the full rights of citizenship were gradually restricted to those who were members of the trading or industrial organizations.

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[1] A. Giry and A. Réville, *Emancipation of the Mediæval Towns* (New York, 1907), p. 9.

3. In France.

In northern France feudalism achieved its greatest strength.[1] The towns, almost without exception, passed completely under the control of lay or clerical lords. They became parts of the ecclesiastical or baronial domain. The feudal lord had jurisdiction over them as over all other parts of his territory. From the townsmen he exacted military service; at first the amount was indefinite but in the course of time the service became limited by custom to a certain number of days per year. He also exacted feudal aids and other monetary obligations. Service in arms was distasteful to the townsmen who were often moved to gain relief from it by tendering the lord additional payments. The feudal lord governed the towns within his domain through his own bailiffs and other officers, he set up his own courts for the administration of justice and these courts were made the agencies of large profit to him. They were far more interested in levying fines and forfeitures than in rendering even-handed justice.

The Struggle for Emancipation in Northern France.

Now, as these French towns grew in size and importance, the townsmen chafed impatiently under the restraints of feudal control and sought to obtain the right of self-government. Sometimes the burghers banded themselves into a sworn society (*conjuraté*) of a secret nature to work for commercial freedom and upon this society the corporate organization of the town was later based.[2] The *conjuratés* began, in the eleventh century, a series of revolutions which culminated after a time in the emancipation of one town after another. Arras, Soissons, Valenciennes, Noyon, St. Quentin, Liége, Lille and Bruges—names made familiar by the events of our own day—all obtained their commercial freedom during the years between 1050 and 1250. In some cases the townsmen revolted, drove out the bailiffs, declared their independence, and by force of arms obliged the feudal lords to recognize their rights by the granting of charters. The walled town proved stronger than the baronial castle. The bloody struggles in Laon, Amiens, and Ghent have been fully recorded. The townsmen, using their mallets, hatchets, and working tools in lieu of better weapons, drove the lord and his retainers outside the walls. Often, when neighboring barons were at war, the townsmen held themselves neutral till the critical moment; then they sold their aid to the best bidder and thus obtained their freedom. In other instances the townsmen secured their charters by purchase from the lord. The crusades had a considerable part in promoting this charter-granting movement, because so many of the feudal lords wanted money to go on the crusades and wanted it badly. The townsmen, seeing their opportunity, would not open their coffers without first concluding a good bargain. So the barons in their need sold charters more readily than they would otherwise have done. By one process or another, most of the French communes obtained their charters before the close of the thirteenth century. In securing them they were sometimes aided by the crown which looked upon the rise of the communes as a counterpoise to the strength of the rural magnates. The kings of France were glad to see communal charters wrung from powerful vassals; but they were not generous in granting charters to those communes which lay within the royal domain. Louis VII, for example, realized that the communes might be turned into allies of the crown and he supported them in numerous instances, but he invariably made them pay handsomely for his royal assistance.

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[1] In southern France the history of the cities is closely akin to those of Italy. The cities of Provence, for example, had been able to maintain, in spite of the general economic demoralization, some of their ancient Mediterranean commerce. Their emancipation, like that of the Italian cities, was secured without a prolonged struggle.

[2] This "corporate" idea of citizenship survived the Middle Ages, and even made its way into the borough governments of the American colonies.

The Charters.

In the amount of local independence which they secured for the town, these communal charters varied greatly.[1] Some obtained the right to choose their own local officers (*maire* and *échevins*) and a definite arrangement as to the nature and extent of their feudal dues, as well as the right to maintain their own courts of justice. Others achieved only a shadowy independence; the feudal lord continued to appoint the officials, and to control the courts. The rank and file of the people took a goodly part in the winning of communal freedom; but it did not profit them much. They merely traded masters, for where the lord relaxed his power the merchants and higher *bourgeoisie* usually took it over. Thus the gap between the governing classes and the workers of the towns steadily widened. The winning of self-government had been the work of all the people in the towns, but few of them continued to enjoy a share in the management of municipal affairs. As in Italy and Germany the French cities passed under the control of the gilds; their government went into the hands of small oligarchies which mismanaged their affairs and oppressed the people.

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[1] The charters were in writing, and although they were most jealously guarded very few of the originals have come down to us. Their contents are known, for the most part, by reason of their having been reiterated in later confirmations. They contained numerous clauses, badly arranged, often vague or ambiguous, and sometimes contradictory.

The Crown Gains the Upper Hand.

This new oppression led of course to internal riots and wrangles. The people organized themselves against the rich aristocrats who had usurped the control of town government and throughout the thirteenth century there were unending conspiracies and small insurrections. At Ghent, Bruges, Arras and Ypres the populace rose in revolt during the years 1275 to 1280, and this gave the crown its opportunity. In the interests of peace the royal authorities bestirred themselves and in the end succeeded in so ordering matters that the towns passed under strict royal control. The king's officers were placed in charge, ostensibly to manage the local finances, but in reality to extinguish, bit by bit, all that remained of municipal self-government. Once in full control of the cities the crown usually gave them new charters—"institutions of peace," they were called. But these documents were the death warrants of municipal independence and the close of the Middle Ages saw the complete extinction of municipal autonomy in France.

The Cities of Mediæval England.

In England during the Middle Ages the development of cities made even slower progress than on the continent.[1] There were many thriving towns in Britain during the period of Roman

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[1] On the development of English borough government during the Middle Ages the following may be singled out as particularly useful sources of information: A. Ballard, *The Domesday Boroughs* (London, 1904); F. W. Maitland, *Township and Borough* (London, 1898); H. A. Merewether and A. J. Stephens, *History of the Boroughs and Municipal Corporations of the United Kingdom* (3 vols., London, 1835); Thomas Madox, *Firma Burgi* (1722); Sidney and Beatrice Webb, *The Manor and the Borough*

Did Roman Occupancy Leave Any Trace?

occupation, as has been said; but when the legions were withdrawn the land fell a prey to Teutonic and Danish raiders.[1] Like the barbarians who overran the Roman empire these people were not partial to town life and during the three centuries after the Romans departed, the towns went into decay. Some of them were altogether obliterated; others dwindled to mere villages. The most highly Romanized regions were in the south and southeast; this part of Britain had at least a score of good-sized towns at the beginning of the fifth century. Most of them now dropped out of sight.[2] Historians know very little about what happened in the British Isles during the period which intervened between the fifth and ninth centuries. This era of four hundred years is almost a blank page so far as early English history is concerned. Nobody knows, for example, whether Roman influence disappeared at once or remained for a time after the garrisons were withdrawn. London was the metropolis of Roman Britain; the numerous roads which radiated from it attest the commercial importance of the place. The Saxon and Danish invaders reduced it to a heap of ruins, and even the courses of the old Roman highways were so completely blotted out that the new streets, laid out when the town revived, no longer coincided with them. A few other places which had served as garrison towns during the Roman occupation, such as York, Colchester, and St. Albans managed to remain on the map but did little more.

The Saxon Burg or Borough.

The chief local unit during the Saxon era was the township, but in the tenth century small communities known as burgs or boroughs began to appear in the records, although it is probable that some of them existed from earliest times. The burg was a small, compact settlement usually surrounded by a wall or moat, into which a varying number of people were gathered for greater facility in trade or defense. It was not a *civitas* in the Roman sense, but merely a Saxon township in which the tillers of the soil, for one reason or another, happened to live close

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(2 vols., London, 1908); Mrs. J. R. Green, *Town Life in the Fifteenth Century* (2 vols., London, 1895); S. Kramer, *The English Craft Gilds and the Government* (London, 1908), and J. R. S. Vine, *English Municipal Institutions* (new edition, London, 1922).

[1] The Romans withdrew in 410 A.D. and the Teutonic raiders began to come about forty years later.

[2] See F. J. Haverfield, *The Romanization of Roman Britain* (London, 1906).

together. Its origin is shrouded in obscurity. Some have endeavored to prove that the burgs were survivals of Roman municipalities and it is probably true that some of them occupied the sites of old Roman settlements. More often, however, the borough seems to have developed from a settlement around some castle or monastery which could afford protection, or at a crossing of roads or a ford of a river, either of which locations afforded a good opportunity for trade.[1] It was, in fact, a defensibly organized form of township, set in a better strategic position, with a mound or ditch instead of the hedge or "tun" which surrounded the township.[2] The government of the Saxon borough was in all probability like that of the township. The people met once a year or oftener and in a "moot" or meeting elected their officers. Where the borough was within the territory of a thane or lord, he named the officers and provided the local court.

Influence of the Norman Conquest on the Towns.

After the Norman Conquest the boroughs made greater progress but their growth was still slow in comparison with the towns across the Channel. Whereas the Roman settlements in Britain had been thriving centers of municipal life, the Saxon boroughs were nothing but agricultural or fishing villages. Throughout the Norman period most of the boroughs were populated by men who had their farms outside the borough limits; there was almost no town industry and very little trade except at the seaports. In many cases the boroughs suffered by reason of the Conquest, for feudal castles were established in their midst to hold them in subjection, and their tax burdens were increased. On the other hand, the Normans maintained law and order, thus permitting inland trade to develop and ultimately this trade benefited the boroughs. The Norman conquerors parcelled out the land among the new nobility, but the crown also held a large domain and, as it happened, most of the boroughs were in this domain. The burgesses owed fealty to the king and he gave them protection. Domesday Book mentions a large number of these royal boroughs. Their government was in the hands of the townsmen or burgesses, but the king maintained in each borough a bailiff who was responsible for the collection of the taxes.

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[1] This is shown by survivals in modern borough nomenclature. The suffix "caster" or "chester" (*castra*) connotes origin as a Roman garrison town, while Oxford, Hereford, Bradford, etc., indicate a river crossing.

[2] William Stubbs, *Constitutional History of England* (3 vols., Oxford, 1891), Vol. I, p. 99.

London.

Among these English towns London held first place. From the last of the Saxon kings it had obtained special borough privileges and these were confirmed by William the Conqueror in 1066. Thirty-four years later London obtained a full-fledged charter which became the model for grants to other towns. The charter given by William in 1066 was no more than a general promise that the ancient liberties of London would not be disturbed, but Henry I in 1100 gave the Londoners a confirmation which embodied some definite concessions.[1] This charter, for example, allowed the citizens to elect their own sheriff and to hold their own courts. It freed them from special exactions and from a number of general imposts. It exempted them from the jurisdiction of all courts but their own. In recognizing the city as a distinct entity this *Carta civibus Londonarum* fixed a landmark in English municipal history.[2]

The Earliest Borough Charters.

Step by step, as the other English boroughs grew in importance they made progress towards local self-government. The procedure was by securing charters, but the charter-winning movement in England differed in two respects from that which we have observed in France. First, the English borough charters were derived, for the most part, from the king, not from the feudal lords. This was merely because most of the boroughs lay within the royal domain rather than in the territories of the barons.[3] Second, they were obtained almost wholly by free grant or by purchase and not by violence. For a long time few boroughs possessed the freedom enjoyed by London, but as time went on a succession of charters raised the townsmen of the boroughs from their status of mere traders, wholly at the mercy of the lords, into burgesses who had purchased their freedom and enjoyed exemption from all but their own courts. Rude as the Norman borough was, it possessed the germ of free government.

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[1] The following is a translation of William's charter: "William the King greets William the Bishop, and Gosfrith the Port Reeve, and all the burghers of London, both French and English, cordially. And I will have you know that I desire you to be worthy of all the laws that you were worthy of in King Edward's day. And I will that every child be his father's heir after his father's death. And I will suffer no man to do you injury. God have you in His Holy Keeping."

[2] A copy may be found in William Stubbs, *Select Charters* (Oxford, 1895), pp. 108-109.

[3] Not a few charters, however, were granted by lords or barons, for example, the town of Bristol was within the Earldom of Gloucester, the borough of Arundel was chartered by the Earl of Arundel. See Madox, *Firma Burgi*, (1722), p. 17. "It is to be remembered that from the Norman Conquest downwards, the cities and towns of England were vested either in the crown, or else in the clergy, or in the baronage, or great men of laity. That is to say the king was immediate lord of some towns, and particular persons, either of the clergy or laity, were immediate lords of the other towns. *Ibid.*, p. 4.

Influence of the Crusades.

In England, as on the Continent, the crusades gave a marked impetus to the granting of charters. When Richard I was preparing to go on his expedition to Palestine he sold charters at bargain rates. And when he was taken prisoner on his way home many more were sold in order to raise his ransom. The townsmen surrendered their jewels and plate in order that common privileges might be secured. John granted a good many charters also, among them a new charter to London (1191) which, with other concessions, gave the people the right to choose their own mayor. And in the Great Charter of 1215 he gave a general confirmation of all borough liberties throughout the realm.[1] It is not to be understood that these charters in all cases made wholly new concessions. Very often the townsmen had already assumed their rights without explicit grant; the charters merely gave formal recognition to the accomplished facts and confirmed to the townsmen privileges already possessed by them.

Privileges Conferred by the Charters of English Boroughs:

The privileges granted to the boroughs by these royal charters were not in all cases uniform, but as a rule they included three important concessions. The first of these was exemption from feudal dues and tolls. Dues and tolls had been collected from the townsmen by the bailiff on behalf of the lord, or by the sheriff on behalf of the king. Not infrequently, as a town grew, it reached over into the estate of more than one mesne lord, so that two or even three barons might be exacting dues and services in different parts of the same borough. This made the desire to gain relief from feudal taxation all the more urgent. In compensation for this relief the townsmen usually agreed to

1. Financial.

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[1] "And the city of London shall have all its ancient liberties and free customs, as well by land as by water—furthermore we will and grant that all other cities and boroughs and towns and ports shall have all their liberties and free customs."

pay a lump sum each year, known as the *firma burgi* or tax of the town. It was not that the latter amounted to much less than the dues and tolls; but it was now fixed in advance and the townsmen could henceforth know with reasonable certainty what their taxes would be. Under the old system the levies were uncertain, both in time and amount. The fact that this payment was henceforth to be made in a lump sum, moreover, attested the solidarity of the borough citizenship. The townsmen were welded together by the bond of a common responsibility. The obligation of individual service gave place to that of joint service —which was a complete departure from the old feudal principle. Second, the townsmen were usually given, by the terms of their charters, the right to elect their own local officers. The duties of these officials did not at first comprise much beyond the collecting of taxes from the citizens and the payment of the *firma burgi* to the king; but their functions in the course of time were considerably extended. Third, the charters gave the boroughs the right to have their own local courts. These were the chief privileges; but some charters went farther and permitted the townsmen to hold markets without payment of dues. Borough charters in the Plantagenet period were not granted in perpetuity but only for the lifetime of the lord or king who granted them. At each change in the succession they had to be renewed.[1]

2. Political.

3. Judicial.

The Earliest Borough Governments.

At the outset the government of the boroughs was simple and democratic. There were no borough councils apparently; the "common council" mentioned in the charters was nothing more or less than the burgesses at large. Meetings of the entire body of freemen were practicable because the boroughs, with the single exception of London, had populations of less than three or four thousand. The freemen themselves had exclusive control of trade, but on market days and at fairs they permitted itinerant vendors to bring their wares. Except during a "fair" the outsider was excluded, and even at a fair he was burdened with heavy dues for setting up a stall and for having his goods weighed. An important function of the borough authorities, accordingly, was that of supervising these marts and fixing the regulations under which trade might be carried on.

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[1] It should be made clear that the grant of a charter in this way did not make the town a corporation. These charters were not charters of incorporation. Borough incorporation did not become common until the fifteenth century. The early charters gave privileges to all the townsmen as individuals, and not in any corporate capacity; the later charters of incorporation vested the management of borough affairs in the hands of a small group. By so doing the charters of incorporation, in most cases, merely confirmed a situation which had gradually developed within the boroughs themselves. For an example of how the close corporation came to be established, see Amasa M. Eaton, *The Origin of Municipal Incorporation in England and the United States* (New York, 1902), pp. 10-11.

The Influence of Trade and Industry.

As the trade grew in importance the entire life of the borough centered around the market. Traders came and took up their residence in the towns. Growth in trade brought an increased population and with this expansion the old plan of borough meetings seems to have been given up. Instead, the freemen adopted the scheme of electing, once a year, a borough council of twelve members to which they entrusted the making of the market regulations and other local functions.[1] In principle these twelve councilmen (or aldermen as they were called in the Saxon vernacular) were the choice of the entire body of burgesses, but as a matter of practice the selection was made from that small class of citizens which, by reason of wealth or social prestige, was influential in the life of the town. The same councilmen were constantly given re-election, a convenient habit which the apathy of the rank and file tended to confirm. Councilmen received no pay; they had little power and no patronage; such duties as they possessed were irksome. Why should not men hold the office so long as they were willing? This tradition of re-election in due course provided the groundwork for a close corporation.

The Rise of the Gilds.

Mediæval institutions were rarely stereotyped; they were always shifting and changing. This was as true of England as of France or Italy. Side by side with the borough government there grew up, as commerce and industry increased, a system of trade and industrial gilds similar to those which existed in the Hanseatic cities of Germany and in the communes of France. These gilds, in their origin, were voluntary organizations of merchants and artisans for mutual assistance and recreation. They served a useful purpose at a time when industrial life and municipal citizenship found great difficulty in making headway against feudal prejudice and extortion. They helped to unify the townsmen and often were instrumental in obtaining, by the free use of their funds, more favorable charters for the boroughs. The merchant gilds were made up of those who engaged in trade, and their main purpose was to further the mercantile interests of their members. The craft gilds were composed of artisans,—weavers, bakers, clothiers, goldsmiths, and so on. The borough authorities do not seem to have looked upon either type of gild with favor, but both the merchant and craft gilds grew in strength and in many instances ultimately gained control of the borough government.

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[1] C. W. Colby, "The Growth of Oligarchy in English Towns," in *English Historical Review*, Vol. V, pp. 633-653 (October, 1890). In some of the larger boroughs the number of councilmen was twenty-four.

This they were able to do by a somewhat curious development. At first the gilds admitted to membership all who carried on trade or practiced a craft in the borough. Since all the townsmen, or nearly all, made their living by some sort of trade or craftsmanship the gild members and burgesses could not have been far from identity in personnel. Gild membership thus became practically synonymous with citizenship. Every reputable townsman who engaged in some gainful occupation could secure membership in a gild and it naturally became the habit to look upon gild membership as a qualification as a share in borough government.

The Growth of Oligarchy.

But the gilds soon tended to become exclusive. Their regulations in the case of the craft gilds (which in time became more important than the merchant gilds) required every applicant to serve an apprenticeship before being admitted, and in other ways limited their membership. The customary identification of voting rights with gild membership resulted, therefore, in a steady narrowing of the municipal electorate. Control of the borough government thus passed into the hands of corporations, the membership of which formed only a small portion of the entire borough citizenship. Election gave way to virtual perpetuation in office, and these permanent office holders eventually obtained from the crown charters of incorporation which confirmed them in their hold. This change from borough democracy to municipal oligarchy was not everywhere accomplished, however, without resistance. Occasionally the excluded burgesses, divining the drift of things, put up a stiff fight to oust the oligarchs, but they were rarely successful. During the Wars of the Roses the democratic spirit suffered an appreciable loss of strength and the close corporations securely entrenched themselves.

Representation of the Boroughs in Parliament.

The development of the close corporations in the English boroughs was stimulated by the granting of representation in Parliament. Prior to 1265 Parliament contained no representatives of the towns, but in that year two members were summoned to Parliament from each of twenty-one cities and boroughs.[1] Some time later the practice of summoning representatives from all the cities and boroughs of the kingdom was regularly adopted, the total number of these communities being about one hundred. Ostensibly these representatives were chosen by the whole body of freemen in the borough, but the desire of the royal authorities to control the election of the borough representatives led them to encourage, whenever they could, the forming of close corporations. At any rate borough democracy had practically vanished in England before the Middle Ages came to a close.

Borough Government at the Close of the Middle Ages.

Under the close corporations the governments of nearly all the boroughs settled down to a nearly uniform basis. There was a mayor, a staff of mayor's assistants known as aldermen who represented the various borough wards, and a common council.[2] The councilmen were nominally elected by the whole body of the freemen, but in reality they were self-perpetuating. The council chose both the aldermen and the mayor. There were various other officers, selected in the same way. When anyone took office he usually held it for life. The officials of the borough held the local courts, managed the municipal property, and elected the borough's representative in Parliament. To the administrative work of the borough they gave little attention, for there was little of it to do.

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[1] The distinction between cities and boroughs at this time was of no political importance. It was the custom to apply the term "city" to any borough which was the seat of a bishop and contained a cathedral.

[2] The office of mayor was a Norman importation; it existed in some of the communes of northern France prior to the close of the twelfth century. London, apparently, was the first English city to use the term for its chief municipal officer; but in the other boroughs the old Saxon titles of portreeve and bailiff were displaced by it also. The mayoralty soon developed prestige and importance; the mayor of London was named a member of the committee whose duty it was to enforce the Great Charter. In some of the boroughs the freemen took an oath of obedience to the mayor. The origin of the aldermen probably antedates the Norman Conquest; the name certainly does. The wards which they represented were very often the original settlements from which the borough had been formed by a process of consolidation. The duties of the aldermen, in the earlier stages of borough development, were neither definite nor extensive, but they assisted the mayor, performed some minor judicial functions, and made the local regulations concerning trade. To be an alderman was a considerable honor. The common council, it has been suggested, was originally a body of prominent citizens elected by the freemen of the borough to relieve them of the various duties, including the task of choosing the aldermen and the borough's representative in Parliament. Certain it is, at any rate, that the freemen often avoided doing the latter task directly:

The Administrative Functions of the Mediæval English Borough.

As for municipal services the boroughs of England were no better provided than were the urban communities of the Continent. Growth in wealth, size and importance did not bring much civic improvement. The streets were narrow, irregular, and unkept. Paving was unknown save on the main streets of the largest towns and there it was of the crudest character. Open drains carried off the surface water and the wastes; there were no regular sewers. Garbage was piled in the yards or in the highways. Water was obtained from public or private wells and carried into the homes. There was no street lighting anywhere. In English towns the houses of the mediæval period were mostly built of wood and destructive fires were frequent. Many of the boroughs owned land from which they received considerable sums in rental, and this income served to reduce the amount which had to be raised by taxation. Education was left to the Church, which also provided for the relief of the poor. The monastery was the great center of charity in mediæval England. It was almshouse, hospital, and school combined. Too often, unhappily, the monks did not exercise enough discrimination in the giving of alms, and bands of sturdy vagabonds roamed from borough to borough living on monastic generosity.

Life in a Mediæval Borough.

The English borough of the later Middle Ages did not resemble the town of today. Mr. Edwin Benson has given us a readable description of life in the Borough of York during the fifteenth century, a description based upon his historical researches.[1]

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there are numerous recorded instances of their petitioning some friendly nobleman to choose a representative for them. The common council, in its origin, may well have been a committee of selection, and, as it would often turn out, a committee of compulsion, for service in Parliament was evaded in those days by the prominent men of the town. Until the boroughs developed into places of some importance, in the fourteenth century or later, the common councils had very little in the way of legislative work to do.

[1] Edwin Benson, *Life in a Mediæval City* (London, 1920). See also T. F. Tout, *Mediæval Town Planning* (London, 1917).

York, at this time, was a place of about 14,000 people and the most important city in the northern part of England. It was a royal borough, so-called, with a charter dating from the time of Henry I. In 1396 Richard II had made the borough a county, and thereafter it had a sheriff appointed by the crown. The borough was governed, however, by a mayor and three city councils known as "the twelve," "the twenty-four" and "the forty-eight," in other words the aldermen, the councillors, and the Court of Common Hall. The mayor was chosen by the aldermen, and the aldermen filled vacancies in their own ranks. Invariably they chose from the ranks of the merchant and trading classes. The councillors and commoners had no authority of importance; ostensibly they were chosen by the freemen of the borough; in fact they formed a close corporation.

How the People Lived.

The whole city was enclosed within defensive works, consisting chiefly of a wall with a moat or ditch outside it. At intervals there were towers and gates with the main roads entering them. Certain sections of the borough also had their own inner walls and defenses. Those who pursued the same trade or vocation lived in the same neighborhood,—in Tanners' Row, or Clothier's Lane, or Candlemaker's Close. The roads from outside, after entering the gates, became the main streets of the city and were known by the names of their respective entering-places,—Petergate, Stonegate, Walmgate, and Mangergate. Some of them were partly paved with cobblestones, and had gutters down the middle. Apart from these main streets there were nothing but lanes and passageways, unpaved and unlighted. The houses were not set on a straight line, so that the passageways became very irregular. To drive a wagon through them was next to impossible; goods were taken about on pack-horses, or, more commonly, by hand. The houses were mostly of timber, or of timber and plaster, usually two stories high. Buildings of more than three stories were very rare. The upper stories, in any case, projected over the lower into the street, thus shutting out most of the light from below. Every street was a business street; the trader had his shop on the ground floor, with shutters which let down by day and were drawn up tight when darkness came. Behind or above the shop the trader and his family lived, his apprentices with him. All were crowded together into a few small rooms, with conditions of ventilation and hygiene that were atrocious. In front the street reeked with filth; it was never cleaned except when some distinguished visitor came to the city. No wonder the chroniclers of the time spoke of the "corrupted and infected air." To make the stench more intolerable, it was the custom to decorate the walls, gates, and towers with the heads of those malefactors who had been executed.

> "Off with his head and set it on York gates;
> So York may overlook the town of York."[1]

Causes of Slow Municipal Growth in the Middle Ages.

Taking Europe as a whole the slow growth of towns and cities during this long mediæval era is one of the most striking phenomena in history. The ancient world saw cities grow rapidly; the same phenomenon has been repeated in modern times. But in the long interval between 400 and 1400, the urban communities of Europe made progress at a snail's pace—in many instances no progress at all.

1. The Feudal System.

What were the chief reasons for this slow municipal progress? The feudal system was an important factor. Its aim was to keep the people on the land. The great majority of the people were serfs, bound to the soil, bought and sold with the estates. There was no surplus population which could furnish a migration into the towns. Eventually it became a rule that when a serf escaped into a town and lived there for a year and a day he became a free citizen, a provision which was of considerable importance in promoting the growth of the communes in France.

2. The Lack of Industry and Trade.

The various obstacles which stood in the way of industry and trade also operated to prevent urban growth. Each community was jealous of its neighbors and tolerated commercial intercourse with great reluctance. There was no consciousness of a common interest. The church of the Middle Ages in some respects helped, but in other ways hindered, the development of urban activities. It promoted the interests of industry and commerce by its part in creating centers around which settlements might grow in safety and trade be carried on. It stressed the sanctity of contracts and thus made the rudiments of a credit system possible. It contributed such education as there was. On the other hand the mediæval clergy frowned heavily on profit-making, which was an essential motive in trade and industry. The Church regarded profit-making as a form of usury. To buy in time of plenty, that one might sell in time of scarcity, was sinful. Commerce, moreover, was likely to bring the Christian trader (especially in the Mediterranean areas) into contact with unbelievers, the Mohammedans particularly; hence it received no enthusiastic approval from the prelates. The Church set its face against worldliness, but it was only through worldly activities that cities could hope to grow and prosper. The ideal which mediæval Christianity held before the eyes of men was a life of withdrawal from the world and its sinfulness. This attitude on the part of the most powerful and most intelligent element in mediæval society was a serious obstacle to urban development.

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[1] Shakspere's *Henry VI.*

3. The Great Plagues.

The great plagues which periodically swept over the whole of Europe were disastrous in their effects upon the towns. These plague visitations, usually bubonic, made their entry through the seaports and trading cities, the infection being brought from the East. Owing to the intimate contact in which the townsmen lived, and the complete absence of sanitation, the pestilence spread more easily in the towns than in the rural districts. The processes of contagion were, of course, wholly unknown to the people of the time.[1] They looked upon pestilence as an inscrutable manifestation of Divine anger, and sought to appease the Deity by resort to religious services and prayer. When anyone was stricken, the neighbors gathered into his home, there to supplicate for his recovery. A more certain way of spreading the plague could hardly have been devised. The Black Death was the most terrible of these bubonic visitations; but it was not the only one. They came at intervals and not uncommonly swept off five, ten, or even twenty per cent of the population. Before a city could recover its loss from one pestilence, another always swept over the land. Even in years when there was no epidemic the town death rates were high. It was not until the eighteenth century that London's death rate fell below her annual birth rate, thus enabling the city to make growth from within. Nowadays a city sometimes doubles its population in twenty, or even in ten years. During the Middle Ages it is doubtful if any city of importance managed to double its population in the course of a whole century. London was a town of at least four or five thousand people when the Romans evacuated it in 410 A.D. Ten centuries later it had only about forty thousand.

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[1] It was not until the nineteenth century that the nature of bubonic plague, and the causes of its spread were discovered by medical scientists. It is still endemic in certain portions of the Orient and sporadic outbreaks have occurred in Europe even within recent years.

What the Middle Ages Contributed.

But it should not be assumed that the contributions of the mediæval towns to modern civilization are altogether negligible. They made at least one outstanding contribution to the development of modern economic society, namely, the doctrine that men might work with their hands and nevertheless be patricians. Craftsmanship in Athens and Rome was largely in the hands of slaves and aliens. But in the mediæval borough the members of the gilds, who were traders and workers, were the men who ruled the community. Labor could not be servile when the worker ruled. The dignity of labor dates from the fall of Rome.

The second great contribution, closely allied to the first, was that of helping to break down the barriers which had separated one social class from another. In the rural areas there were dukes and barons, earls and thanes, abbots and priors; in the mediæval town there were burghers only. It was this democratic citizenship of the towns that paved the way for the ultimate control of government by the whole people, as the parliamentary history of England illustrates.

REFERENCES

On the institutions and life of the French commune, the English borough, and the German free city during the Middle Ages there is a great deal of material, most of it widely scattered. It is unnecessary to list even the most important items here, for they may conveniently be found in L. J. Paetow's *Guide to the Study of Mediæval History* (Berkeley, Calif., 1917), especially pp. 251-253, and in the *Bibliography of British Municipal History*, published by my late colleague, Professor Charles Gross (New York, 1897). A few accessible sources of information concerning the development of municipal institutions in England are indicated in the footnote on pp. 44-45.

CHAPTER IV

THE RISE OF THE MODERN CITY

When the Modern Period Begins.

In municipal history the modern period begins about the year 1500. It was ushered in by the breakdown of feudalism and the growth of a strong central power in the various countries of Europe. Free cities, or city-states, continued to exist in some instances, but over the greater portion of western Europe the subordination of the city to the central government became well-nigh complete. Strong monarchial governments began to exert their influence in England, France, and Spain, unifying these countries, maintaining law and order, promoting foreign trade and giving the cities a chance to thrive. Even in Italy and Germany, the territorial governments began to grow in power.

The End of Parochialism.

With the development of strong central authorities the long era of civic isolation drew to a close. The towns were no longer permitted to make and enforce regulations hostile to one another or to the rural districts. The rules relating to trade and industry tended to become uniform, or fairly so, over considerable areas of territory. During the Middle Ages the towns possessed a virtual monopoly in all fields of industry, for the gild regulations prevented the marketing of wares outside the city limits. If anything were made outside it could not be freely sold at the town market. Beginning with the sixteenth century, however, the supremacy of the gilds in industry was broken; and the cities commenced to lose the exclusive privileges which had enabled them to make progress at the expense of the surrounding territory. The gild system of industry began to give way to what economists call the "domestic" system of industrial organization, under which every rural community supplied its own elementary needs by local manufacture and became less dependent upon the towns. This, it might be thought, would have given the towns a setback, and no doubt it did so for a time; but the increased prosperity of the rural areas eventually proved an advantage to the towns themselves.

Effects of the Religious and Dynastic Conflicts upon the Cities.

The most serious difficulties with which the cities of continental Europe had to contend during the sixteenth and seventeenth centuries were the internal armed conflicts, particularly those which had their origin in religious differences. The cities, being walled or otherwise provided with means of defense, became strongholds of one or another faction; they were besieged frequently, captured at times, and often partially destroyed. The Thirty Years' War in the regions north of the Rhine exhausted the cities and the country alike. England, for the most part, escaped these disasters. Although there was a long and bitter controversy between the crown and Parliament which ultimately culminated in a civil war, neither the controversy nor the war resulted in serious harm to the centers of trade. For this reason the boroughs of England forged steadily on, gaining relatively in population and resources over those of the various continental countries.

The New Commercial Orientation.

The world-events of the sixteenth century gave the cities of Europe a new orientation. Down to about 1450 the cities of the Mediterranean and Baltic regions had distinct geographical advantages as trading entrepôts. The Italian cities were well located for commanding the commerce of the Near East. The Hanseatic communities of the Baltic and the North Sea owed much of their prosperity to the trade of these northerly regions which, by virtue of their location, they were able to control. But the commercial situation, at the close of the Middle Ages, took a new turn. The Ottoman Turks, gaining a mastery of the Near East, interfered with the freedom of the old trade routes, and the discovery of a new route to the Orient, around the Cape of Good Hope soon provided a better substitute. The flow of commerce, thus choked by the conquests of Islam, was diverted from the Mediterranean to the open channel of the ocean by way of the Cape. At one stroke the Iberian peninsula succeeded the Italian as the nerve center of world commerce. The discovery and colonization of America clinched the commercial hegemony of the ports which fronted on the Atlantic.

The Pivot of Trade Moves to the Atlantic Seaboard.

In the new commerce neither the Italian nor the German cities were destined to have any large share. They were not favorably situated with reference to the new routes. The cities of Spain and Portugal, even those of France and England, were better placed. The Italian cities were the heaviest losers by the inception of the new commercial arrangements. Their heyday of their prosperity came to an end during the sixteenth century and they began to decline.

The Heyday of the Spanish Cities.

For the moment the cities of the Iberian peninsula were their principal heirs. Spain, through her control of the West Indies and Central America, grew rich rapidly. Her seacoast cities, especially Seville and Cadiz, rose to great commercial importance. The former, which for a long time possessed a monopoly of Spanish trade with the West Indies and America, became extraordinarily rich in its industrial life compared with the poverty and stagnation of a few generations previously. But the foundations of economic prosperity in the Spanish cities were not well and truly laid. Silver poured in from Mexico and Peru, but much of it went to buy goods from England and from the Netherlands. Both of these countries received a stimulus to their industries through the opulence of Spain. The single town of Bruges, in Flanders, for example, manufactured more cloth in the middle of the sixteenth century than all the cities of Spain put together, yet Spain was a large wool-producing country and might have built up a great textile industry at home. When the flow of specie was interrupted, the Spaniard had nothing to fall back upon. Nothing had been done to lift agriculture out of its old ruts, for the authorities in the day of their opulence had failed to recognize its fundamental importance in the upbuilding of a sound city life.

Portugal.

Portugal also shared in the fleeting wave of Iberian prosperity. Lisbon developed a huge commerce with Brazil, and with the East Indies by way of the Cape; for a short time the city ranked as the foremost trading center of western Europe. Its rapidity of growth during the second half of the sixteenth century is comparable only to that of New York in the second half of the nineteenth. But Lisbon also succumbed in time to the growing competition of the Dutch and English seaports, although it remained a great port until well into the eighteenth century.

Rise of the Dutch and Flemish Trading Cities.

Towards the end of the sixteenth century the cities of the Netherlands strode into the front rank among the industrial and commercial centers of Europe. Bruges and Ghent profited by the development of the woolen industry in Flanders, while Antwerp was for a considerable period the European terminus of a large trade with the East Indies. Its population during the latter years of the sixteenth century rose to 200,000, thus giving it rank as the second largest city in Europe. A little further north, the successful revolt of the Spanish Netherlands and the rise of the Dutch Republic gave an impetus to Amsterdam and Rotterdam. The former eventually wrested from Antwerp a considerable portion of its commerce. The Dutch, at the beginning of the seventeenth century, were the leading traders of Europe, and their merchant fleets carried on a large commerce with all parts of the world. Their maritime supremacy was not of long duration, however, for the English in due course outstripped them on the seas. Both the leading Dutch cities retained much of their commercial importance, nevertheless, and throughout the nineteenth century were able to hold their own among the seaports of Europe.

Slow Growth of Cities in France.

In France the growth of cities during the sixteenth and seventeenth centuries continued to be slow. France remained for the most part an exclusively agricultural country. There was no such general development of domestic industry as that which took place during these two centuries in England. Manufactures and internal trade were greatly hampered by countless regulations and restrictions. The exchange of goods between city and city was hindered, and in some parts of the country almost prohibited, by the number of tolls to which trade was subjected. Merchandise passing from Havre to Paris paid duties at ten points on the way. There were twenty-eight different tolls on the Loire. Owing to the bad condition of the roads, moreover, the cost of transportation was very high. A pound of salt, which cost only two sous at Rochelle was worth twenty-five by the time it reached Paris. From Calais to Paris, which is now few hours journey by rail, took six days by road in these days. A letter from London to Paris did well to get through in a week. Under such conditions the industries of the cities made exasperatingly slow progress. The one notable exception was the silk industry which achieved marked progress in a few cities, particularly in Lyons and Toulouse.

The French were slow, moreover, in getting a hold upon foreign trade. Spain, Portugal, Holland and England were exploiting the wealth of newly-discovered lands while France lagged far behind. Not until the age of Colbert, when the middle of the seventeenth century had gone by, did the government earnestly bestir itself in the creating of the commercial companies and the gaining of colonies. Meanwhile internal wars were convulsing the land and demoralizing the scant industrial organization that it had. The wars of the Fronde and the conflict with Spain brought partial destruction to many of the growing towns, crippled their infant industries, and left them overwhelmed with debts. It is doubtful whether France as a whole made any substantial gain in population during the years from 1620 to 1660. Certain it is, at any rate, that cities like Marseilles, Bordeaux, Rouen, Cambrai, Verdun, Tours, and Orleans failed to record any marked increase.

Paris in the Centuries Preceding the Revolution.

During all this time, however, Paris continued to grow. In 1550 it was the largest city in Europe, with a population of about 300,000. A century later this figure had risen to half a million, but from 1650 to 1700 the growth was less rapid. Vauban, the great military engineer, estimated that in 1700 Paris had 24,000 houses and a population of about 700,000, which is rather too high. By 1750, however, it had probably passed this mark and was progressing steadily, although not so fast as London. The latter overtook Paris about that year. During the reign of Louis XIV the city walls were demolished and Paris was permitted to expand. Many of the old, irregular streets were modernized and marked improvements were also made in the chief municipal services which were still in the throes of mediævalism. But even in the days of Richelieu Paris retained most of its mediæval squalor. Most of the city thoroughfares were unpaved; the duty of keeping them clean was divided between the national and municipal authorities, with the result that it was usually performed by neither. Sidewalks were still unknown. In bad weather the conditions of pedestrian travel were such that people had to wear high boots when they plodded through the streets from place to place. For a carriage to tip over in the ruts and holes, spilling its occupants into the mud, was not at all uncommon. As most of the city was low, and the drainage poor, pools of filth lay in the narrow streets where little sunlight reached them and the stench became intolerable. It was not until the energetic Colbert took the highways of Paris in hand that they were put and kept in decent condition.

The French Capital in the Seventeenth Century.

Such drains as there were led to the Seine, which also served as the source for most of the city's water supply. Fever raged in the city at all seasons. Then, as now, the Seine became unruly at times, inundating the streets, backing the drainage into the cellars and sweeping away the wooden bridges. In public lighting Paris was the pioneer among European cities, the authorities having arranged, as early as 1558, that lanterns should be hung at the street corners during the winter nights. But away from the corners there were no lights save such as the bourgeoisie set in front of their shops or homes and which thieves often smashed or extinguished. As in ancient Rome the gentleman whose business carried him abroad after dark was preceded by an armed lackey bearing a lantern or torch. There were no civil police, but military forces were stationed in various parts of the city to be used in case of riot or other emergency. Paris was full of robbers and ruffians, while beggars were to be met at every turn. There were no public schools. Education was left to the Church, the civil authorities giving it no attention. The masses grew up in illiteracy and among the population of the cities not one person in ten could read or write. Yet there was no lack of money for æsthetic enterprises. The most lavish expenditures were made upon works of adornment, on royal palaces, the Louvre, the Tuileries, and other public buildings. The money spent by Louis XIV on structures, parks, and gardens at Versailles would have sufficed to make Paris an altogether different city, but that was not the way of the Bourbons.

The Spirit of French Government Before the Revolution.

France under the Bourbons was in theory and in practice a despotism, and so remained until the Revolution of 1789. Neither in national nor in local government was there any recognition of popular sovereignty. Paris was governed directly by royal officials; it had no elective mayor or council. In the smaller cities the officials of government were also appointed, not elected. The country was divided into districts, or *généralités*, in each of which there was a royal officer known as the *intendant*. These intendants were the agents of the monarchy and they exercised a close supervision over the workings of city government everywhere. In 1692 Louis XIV inaugurated the policy of selling municipal offices to the highest bidder, and with some intermissions this policy was continued down to the Revolution. The government of each commune was in the hands of a mayor, two or more adjoints (*échevins*) and a communal council, together with a secretary, a treasurer, and a royal prosecutor (*procureur-*

du-roi), all of whom were appointive officers. The townsmen were subject not only to local but to royal taxes, the latter being arbitrary and uncertain in amount. The privilege of collecting the taxes was farmed out to the highest bidder. A considerable portion of this revenue was obtained from the *octroi,* which was a local tariff on imports. It was levied upon all foodstuffs and merchandise coming into the commune. The towns gained some revenue from the *octroi,* but the system operated to their ultimate disadvantage. The free flow of trade would have benefited them more.

No Municipal Democracy Anywhere.

As respects municipal organization, sources of revenue, and strictness of central control there were considerable differences, however, in various parts of the realm. There was no uniform system of municipal government in France before the Revolution. Even within the limits of a single province there were variations. The one feature in which substantial uniformity could be found was the absence of real self-government and municipal democracy. Whatever the form of organization, the people did not control it.[1] There was no independent municipal life in France until the Paris mobs surged against the Bastile on July 14, 1789, and started the upheaval which brought down the whole edifice of Bourbon despotism.

The Revolution and the Decree of 1789.

The Revolution swept away the old municipal system. It placed all the cities, towns and villages (of which there were about 44,000) on a uniform basis, making all their officials elective and virtually establishing manhood suffrage. The chief governing organs of the commune, as established by the Revolutionary decree of 1789, were a mayor and a communal council, chosen for short terms by popular vote. The most drastic reform of all was the complete abolition of central control. Practically unrestricted home rule was given to every local community in France. It was the design of this decree, in accord with the revolutionary philosophy of the day, to treat them all as miniature republics with complete rights of self-determination.[2]

An Interlude of Municipal Chaos.

Like most of the legislation which was enacted during the earlier years of the French Revolution, the decree of 1789 went too far. The people had not been sufficiently trained in the art of self-government. Left to themselves, without any control from Paris, they soon managed to get their local affairs into chaos. Money was spent wastefully; the property of the communes was often sold to pay current expenses; riots and disorder spread through many of them, and their guillotines were used too ruthlessly. The new system, it is true, was subject to a terrific strain, for these were the tragic days of the Red Terror when law, order, and justice were being set at naught in all parts of France. But if the fruits of the Revolution were to be preserved, the towns could not be permitted to promote a condition of anarchy. Even revolutionists are not so wedded to a principle that they are willing to follow it to ruin.

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[1] Albert Babeau, *La ville sous l'ancien régime* (Paris, 1880).

[2] *Décret sur les municipalités* (December 14, 1789). An English translation may be found in F. M. Anderson's *Constitutions and Other Select Documents Illustrative of the History of France,* pp. 24-33.

The Modification of the Decree, and the Code of 1800.

In 1795, therefore, when the Revolution entered its second and more orderly stage there was a reaction against this policy of complete municipal independence. The new central government, or Directory, which came into power in that year, made provision for a stricter control over the local authorities. The right of the citizens to elect their own local officers was continued, but these officers were made responsible to the central authorities at Paris. And five years later, when Bonaparte rose to the executive headship of French affairs with the title of First Consul, he carried the process of centralization a step farther by providing for the appointment, instead of the election, of all municipal officers. Every commune, large or small, was henceforth to be governed by a mayor, one or more adjoints, and a communal council—all of them appointed by the central government or by its prefects. This municipal code of 1800 eliminated from local government most of the democracy which the revolutionary decree of 1789 had put into it and centralized the whole system as completely as it had been centralized under the Bourbons.

The Bonapartist Reorganization of Local Government.

Elaborate machinery was provided by Bonaparte for the exercise of strict central control over every portion of the country. The revolutionary government, some years previously, had abolished the old *généralités* or provinces, each of which had been ruled during the Bourbon era by a royal intendant. In their place administrative districts known as *départements* were now set up, with a prefect at the head of each, thus reviving the intendants under a new name. Appointed by the central government and responsible to it alone, these prefects were virtual governors of their departments. Their function was to receive instructions from Paris and to see that these were carried into literal effect. The Napoleonic scheme of centralization further provided for the division of each department into *arrondissements,* each with a sub-prefect at its head.

Importance of Napoleon's Work.

This Bonapartist code or "constitution" of 1800 deserves some emphasis because it remains the groundwork of local government in France today.[1] Not only that, but the Napoleonic conquests carried it into Spain, Italy, and Belgium where it has likewise remained, with various modifications, down to the present time. In Greece, in the Balkan states, in the new republics of central Europe, in the countries of South America, even in Japan, the prevailing systems of local government bear many resemblances to that established by the First Consul. The Corsican was a constructive statesman as well as a soldier. His scheme of local government has penetrated into regions where his armies never marched. Upon the evolution of local government during the past century and a quarter, France has exerted a far greater influence than any other country.

Retention of His System After 1815.

The Napoleonic empire was overthrown in 1815 but the municipal system did not go with it. The scheme of appointive mayors and councils remained; the prefects continued in control of municipal affairs within their departments; the central authorities, through them, maintained their close supervision over local government. In the course of time the privilege of electing their own officials was restored to the communes; but in other respects the relations between the cities and the state in France have remained substantially unaltered for over a hundred years.

French City Progress During the Nineteenth Century.

During this interval, the cities have made a great advance in numbers, in population, and in wealth. In 1801 France had only three cities with populations exceeding 100,000; today there are fifteen. This is not a remarkable showing when compared with the growth of cities in the United States, Great Britain, or Germany; but it must be remembered that the total population of France has undergone no substantial increase during the past seventy years. Her population was about 36,000,000 in 1850; it is a little under 37,000,000 today. The urban communities have been gaining at the expense of the rural population, and whereas in 1850 only twenty-five per cent of the French people lived in towns and cities, the proportion today is almost fifty per cent. Paris, which dwindled during the Revolution to less than 600,000, made fairly good progress during the nineteenth century: its population exceeded 1,000,000 in 1850 and was nearly 3,000,000 in 1900.[1] Napoleon I made great improvements in the streets and public works, while his nephew, Napoleon III, transformed the city into a modern metropolis during his tenure of the imperial throne (1852-1870). The reconstruction of streets, sewers, and water supply, together with the improvements in public lighting, police administration and the other municipal services which were accomplished during this era made Paris the finest of national capitals. This high place, despite her vicissitudes, she continues to hold. No other French city approaches Paris in size. Lyons and Marseilles have each about half a million. Bordeaux, Havre, Nantes, Nice, and Strasbourg, have populations exceeding 200,000, and so had Lille before the War. But Paris is as large as all of them put together. The urban strength of France lies chiefly in communes of medium size, places of from 10,000 to 100,000 population, of which there are about two hundred and fifty. It is there that the problems of city government are being most successfully worked out.

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[1] It may be found in Anderson's *Documents*, pp. 283-288.

The Growth of Paris.

In England the growth of cities proceeded very slowly during the sixteenth century but was accelerated somewhat during the seventeenth owing to the development of foreign and colonial trade.[2] Under the stimulus of the Navigation Acts most of the imports were being carried in and most of the exports taken out by English vessels. Merchandise which was manufactured in scattered towns by domestic producers was gathered together for shipment from the rapidly-growing ports. Long before the application of steam power to industry the southwestern, central, and northwestern parts of England were producing textiles in large quantities. Birmingham, Halifax, Sheffield, Manchester, Leeds, Bolton, and the other great factory towns of the present day were already moving forward in size, although the great period of their growth did not arrive until after 1750. Bristol

The Beginnings of Rapid City Growth in England.

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[1] Owing to the setback due to the War it is very little, if any, larger today.

[2] In 1500 there were over a hundred chartered boroughs in England, but the number with populations exceeding 5000 could probably have been counted upon the fingers of one hand. The great majority were little villages of a few hundred people.

was England's chief seaport; in the seventeenth century her seaborne commerce surpassed that of London.

London Progress from 1500 to 1700.

But in population London far outranked all other towns of the kingdom. Her population of 40,000 in 1500 had risen to a quarter of a million in 1600 and it was well above 500,000 by the close of the seventeenth century. This was about one-tenth of the national population. It is small wonder that London played a dominating rôle in English life at this time, for the metropolis was not only the chief business center but the residence of the great landowners who controlled the political and social movements. As London went, so went the rest of the land. How seldom, in the voluminous annals of this period, do we read of English national figures from outside the borders of London! There were some "village Hampdens" but not many.

Macaulay's Description of London at the Close of the Seventeenth Century.

General Topography of the Metropolis.

Macaulay, in one of his notable chapters, has given us a vivid picture of London life in these days of the later Stuarts.[1] After the great fire of 1664 a large portion of the city had been rebuilt; but the old street lines were for the most part retained.[2] The narrow thoroughfares should have been widened; but economy and impatience carried the day and the admirable plans which Sir Christopher Wren prepared for the rebuilding of the city were relegated to the waste basket. London had a rare opportunity to have become, as early as 1664, the world's best-planned city, but chose to forego a chance which never came again. The shops and houses, however, were better structures after the fire than they had been before, for most of them were now built of brick,—heavy, plain, and solid. The new London spread out far beyond the limits of the old city. For miles the Thames on both its shores was thronged with ships of all sizes which piled their cargoes high upon the docks. The city straddled the river but there was only one bridge to connect its two sections.

Streets and Pavements.

The pavements in all parts of the city were still in shameful condition; during wet weather the equipages wallowed their way through oceans of mud. Many of the streets were so narrow that carts and carriages could not pass one another. Travel through the city highways was so difficult that the river became the principal thoroughfare for both passengers and goods. Boatmen plied a thriving trade; they were the taxicabs of seventeenth-century London. Wherries on the Thames were as numerous as gondolas in Venice. There were no sewers, but on either side of the narrow streets were open gutters which carried off the surface water. Into these the occupants of shops and houses, disregarding the laws and penalties, dumped all manner of garbage and filth. When the London housewife had a pail of water to empty she threw the contents out of the window into the street. Until the fourteenth century it was the custom to turn swine into the streets to serve as scavengers, but the later practice was to gather the piles of refuse into carts for transport to the open places which were provided here and there throughout the city. From these neighborhood centers, with their mounds of offal and dead animals, the stench rose to heaven. One great open drain known as the Fleet Ditch carried much of the surface water and sewage into the Thames. Originally a natural tributary of this river, the Fleet Ditch became its main channel of pollution and the source of more than one epidemic. There was a private water company which supplied the homes in a small portion of the city, but most Londoners had to draw their supplies from the river. In view of the extreme pollution by the city's drainage it is hardly surprising that London was never free from cholera and fever.

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[1] *History of England,* Vol. I, Ch. iii.

[2] The "great" fire of London destroyed an area of about one square mile. Eighty-nine churches and thirteen thousand houses or shops were burned. It was the greatest urban conflagration since the burning of Rome in Nero's reign. The classic description of the London fire is given in Pepys' *Diary.*

Sanitation.

Water Supply.

The streets bore quaint names, and the houses were not numbered. There would have been little advantage in numbering them, Macaulay says, for very few coachmen, porters or delivery boys could read. It was necessary, therefore, to use some symbol or a mark which the illiterate could understand. Hence, as one walked through a busy thoroughfare, he passed an endless succession of Boars' Heads, Golden Cocks, Bell-in-Hands, Red Lions, Royal Oaks, and so on. These house signs were usually very large and jutted out so far into the narrow streets that they sometimes met and touched each other. Painted, carved, and gilded affairs they were, lending a garish touch to the thoroughfares in all parts of the city.

London's First Street-Lighting Contract.

Until the closing year of Charles II's reign there was no system of public street lighting. As in the days of ancient Rome, the well-to-do maintained lanterns in front of their own doors. In 1685 an enterprising promoter obtained for a term of years the city lighting contract.[1] The contract provided that he must maintain a light in front of "every tenth door, on moonless nights, from Michaelmas to Lady Day, and from six to twelve of the clock." This meant about one hundred nights per year. For fifty years these flickering oil lamps provided the city's entire illumination. At every tenth door there was a little oasis of light in a desert of darkness which reminded one of Juvenal's Rome. It was a rare environment for footpads, night-hawks, and "Mohocks" as certain types of nightly marauders were called, and they utilized their opportunities to the full. It was not until 1736 that the city authorities themselves took over the work, erected oil lamps along the streets, and kept them lighted "from the setting to the rising of the sun." Gas lighting did not make its appearance until after 1800.

London's Police in the Seventeenth Century.

From sunset to sunrise there were watchmen on duty in the city streets, about a thousand in all. Every inhabitant was required to take his turn at this duty. But many of them, when their tour of duty came, never left their homes at all, while others spent more of the night tippling in ale-houses than in patrolling the streets. Still others, when their turn came, hired needy old men to do duty for them. From the writings of Fielding we know that the London watchmen and constables were no better in the early years of the eighteenth century than they had been in the middle of the seventeenth. "They are chosen out of those poor, decrepit people who are, from want of bodily strength, rendered incapable of getting a livelihood from work." Thieves and roysterers, "flown with insolence and wine," roamed the streets at will. As late as 1730 Smollett wrote that these malefactors were more desperate and more savage than they had ever been "since mankind became civilized." It was highly unsafe for peaceable citizens to venture forth unless accompanied by armed bodyguards. Members of Parliament were sometimes robbed and assaulted on their way home from Westminster. Yet London was at this time far better off in municipal services than was any other English community. In smaller places, especially in the mining and textile towns, the congestion and filth were beyond description. There the whole population was crowded into one dense mass of ramshackle cottages separated by unpaved and almost pestilential streets.

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[1] This contract, which was granted to Edward Heming, permitted the contractor to levy a lighting tax of six shillings per annum from every rateable householder. Anyone who chose to hang out his own lantern was exempt from the tax. Heming paid the city £600 per year for his franchise.

Some Smaller English Cities: Bristol.

Next to London, Bristol was the largest town in England at this time with 30,000 people. The diarist, Pepys, who visited Bristol in 1668, was impressed by its splendor and noted as a marvel the fact that "a man might look around him and see nothing but houses." Pepys, apparently, knew only two places in England where the buildings shut off the view of woods and fields. These were Bristol and his own London. One or two other English towns in 1685 had as many as 20,000 people; but the great industrial centers of today such as Liverpool, Manchester, Birmingham, Leeds, Sheffield, and Bradford were still below that mark. Liverpool was scarcely heard of as a port prior to 1700; its first dock was not opened until after that year. Manchester was making some progress with its domestic manufactures; but it had not yet begun to export cotton fabrics. Norwich, already famous for its worsteds and woolens, surpassed it in population. Newcastle was a thriving town, but its coal resources were not developed on a large scale until much later. The typical English borough of the seventeenth century was a place with 10,000 population or less. Even here, however, there was a congestion of huddled cottages and narrow streets, with no adequate provision for sanitation, water supply, police or fire protection.

Liverpool.

Norwich and Newcastle.

The Passing of the Old Municipal Democracy.

In all the English cities, whether large or small, municipal democracy lost ground during the seventeenth and eighteenth centuries. It will be recalled that the boroughs, by their mediæval charters, had achieved a large measure of popular self-government and that borough administration had been conducted for a time upon a truly democratic basis, the entire citizenship taking a share in the election of local officers. Then, through gild and other influences, the suffrage narrowed; the borough authorities became virtually self-perpetuating; and local oligarchy supplanted borough democracy. In 1500 many of the English cities and towns were governed by close corporations which comprised only a small number of the wealthier citizens. All *freemen*, to be sure, still possessed the right to vote; but let no one be misled by the resonance of this word into belief that it stood for anything approaching manhood suffrage. Originally

The "Freemen."

it meant all male adults who were not serfs, villeins, or otherwise bound to the soil; but in the course of time it came to connote a very special privilege based either on birth, or marriage, on the ownership of certain freehold lands, or resulting from honorary rank conferred by the borough corporation. To be a freeman and possess the "freedom of the city" did not, however, require actual residence; many of the freemen were non-residents.

The New "Pocket" Boroughs.

During the Tudor and Stuart periods, extending roughly from 1500 to 1700, the drift of borough government into fewer hands went steadily on. Whenever new borough charters were granted by the crown, or old charters revised, the opportunity to strengthen the control of the close corporations was almost always utilized. It will be noted that all borough charters came from the crown, not from Parliament. Petitions for new charters of incorporation, or for charter changes, were sent to the king by certain leading inhabitants or burgesses, and the charters incorporated *them,* not the entire population, as "the mayor, aldermen and commonalty" of the borough. In this way many new boroughs were chartered during the sixteenth century, and practically all of them on a non-democratic basis. It was not until after the Revolution of 1688 that Parliament began to assume the right of deciding what the electoral basis of borough government and representation should be.

The Inspiration to Borough Oligarchy.

The chief reason for this prolific increase in new boroughs, and frequent changes in the charters of the older ones, is not far to seek. The number of borough seats in Parliament was never fixed by law; it was "always at the will of the king to increase," as Pepys phrased it. The crown was anxious to maintain, so far as possible, its hold upon Parliament, and one effective way of doing this was to increase the number of seats which could be filled without deference to the will of the people.[1] A House of Commons made up largely of members each of whom was chosen by a relatively few leading inhabitants of a borough would be far more amenable to royal control than a popularly-elected House. In such boroughs there was no need for costly canvassing and electioneering. The only problem was to get control of the few leading citizens who made up the corporation; the rest was easy. Mayors and aldermen were generally none too honest or too scrupulous in the "pocket" boroughs; it was their regular habit to sell the seat to the highest bidder among the king's friends. So the crown and its chief supporters did not neglect the opportunity to charter new boroughs, and to give the close corporation of these new boroughs the right of representation in Parliament. Prior to the seventeenth century this right of representation in Parliament was not eagerly sought by the people of the boroughs; they looked upon it as an imposition rather than a privilege, since they had to pay the member of Parliament for his services and defray his expenses. Not infrequently, therefore, a borough was chartered and given representation against the wishes of its citizens.[1] This, however, did not weigh heavily as against the ambitions of the crown. Some of the newly chartered boroughs were straggling villages "whose streets," as Edmund Burke once put it, "can only be traced by the color of their corn and whose only manufacture is members of Parliament."

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[1] From 1483 to 1625 the number of borough members in the House of Commons increased from 222 to 395. Charles I, whose policy was to get along without Parliament rather than to control it, created no new boroughs. From 1625 to the Reform Act of 1832 the number of borough representatives in the House of Commons remained fixed at 395. John A. Fairlie, *Municipal Administration* (New York, 1901), p. 50.

The Strained Relations of the Crown and the Boroughs after 1600

But the newly-created boroughs did not always do what was expected of them. Often they bit the hand that had fed them, thus displaying an ingratitude which has been the aftermath of crooked politics in all ages and in all lands. During the English Civil War most of the boroughs, both new and old, sided with Cromwell against the king, and they formed the mainstay of Cromwell's power when Charles I had been deposed and beheaded. Even after the restoration of the monarchy in 1660 some of them continued to be thorns in the side of the crown, this being particularly true of boroughs in which the close corporations were not supreme. During the reign of Charles II (1660-1685), accordingly, the royal authorities undertook judicial proceedings for the revocation of many borough charters, including the charter of London, and in 1683 the Court of King's Bench declared the charter of London to have been forfeited. The ostensible ground for this decision was the allegation that the city had exceeded its rights in the exaction of certain market tolls; the real reason was the willingness of a subservient tribunal to join with the king in punishing the metropolis for its frequent opposition to the court party. Similar proceedings were threatened against many of the boroughs and not a few of them gave up their charters. In place of these older charters the king granted new ones with provisions for a narrower electorate.

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[1] One of them complained that it was *malitiose ad mittendos homines ad Parlamentum oneratus.* Charles Seymour and D. P. Frary, *How the World Votes* (2 vols., Springfield, Mass., 1918), Vol. I, p. 77.

Effects of the New Industries on the Towns.

Such was the state of English borough government when the Industrial Revolution began. With the introduction of steam power and the rise of the factory system many of the towns were quickly overwhelmed by the rapid inflow of population. They soon lost their last glimpses of nature and became enmeshed in a giant web of smoke and squalor. Houses multiplied in every nook and corner, even the town common was sometimes built over. Cottages were erected without regard for any interest but that of the speculating builder. "In one instance a street followed the course of an open ditch, because in this way cellars could be secured without the cost of digging, cellars not for storing wares or rubbish, but for dwellings of human beings. No house in this street escaped the cholera."[1] The houses in many of these mushroom towns were built squarely back to back, with no space between, no drainage, and almost no facilities for ventilation. The creative spirit and organizing genius of the age went into the making of machinery—little heed was paid to the making of men. The town authorities were so engrossed in the building of mills that such things as streets, lighting, and sanitation were left unheeded.

The Close Corporations Prove Unequal to Their New Tasks.

Into this new industrial order the supremacy of the close corporations continued, and they proved absurdly incapable of handling the new problems of urban life. The larger towns, stifled by this inaction and inefficiency, sought relief by applying to Parliament for special legislation, as a result of which many of them obtained special boards and commissions with power to provide those municipal services which were most urgently needed. In such cases the authority of the close corporations was correspondingly narrowed, and in some boroughs their only important functions, in the early years of the nineteenth century, were those of electing a member of Parliament and administering local justice.

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[1] J. L. and Barbara Hammond, *The Town Labourer* (London, 1917), p. 44.

Genesis of the Movement for Municipal Reform.

It was by special legislation that many of the larger English towns were provided with their first systems of water supply, sewerage, and public lighting. Those diligent searchers of English municipal records, Sidney and Beatrice Webb, have elaborately traced the history of borough administration during the years from 1688 to 1835 and their investigations prove that not all of the towns fared alike. Some were better governed and better provided with the conveniences of urban life than others. In none of them, it is true, did the majority of the people, including the workingmen, have anything to do with the direction of municipal policy; but this does not mean that the public interest was always disregarded by the governing authorities. The close corporation was not always inefficient or corrupt.

The Agitation Developed Late and Slowly.

Writers have been in the habit of assuming that the people of the towns bitterly resented this system of oligarchic municipal government and for many decades struggled without success to rid themselves of it. They have taken it for granted that the great municipal reform of 1835 was the culmination of a prolonged and arduous battle between the people and the privileged classes of the boroughs. But the Webbs have shown that this was not the case. There was no general agitation for the reconstruction of English town government until the very eve of the Reform Bill.[1] In spite of the undemocratic constitution of the municipal corporations, and the bad administrative record of many of them, there was no single case in which either Parliament or the law courts "opened" a municipal corporation to the ratepayers or to the inhabitants at large. "From the beginning to the end of the eighteenth century (if we exclude from consideration the right to elect members of Parliament) there was no general attack upon either the constitution or the jurisdiction of the corporations. In spite of the frequent applications made to Parliament by the corporations themselves, we have not come upon a single petition, from any person whatsoever, praying that the municipal constitution might be changed to an elective one."[2] Down to about 1820 there was no general movement to reform the government of the English boroughs, despite the fact that the close corporation was rapidly becoming an anachronism. During the next fifteen years, however, the expressions of discontent began to grow in volume and finally culminated in a tide of popular clamor which could not be resisted.

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[1] Sidney and Beatrice Webb, *English Local Government* (6 vols., London, 1906-22), Vol. III, p. 694.

[2] *Ibid.*, p. 695.

How the Demand for Municipal Reform Began.

The earliest expressions of uneasiness, curiously enough, did not come from the workers but from the mill-owners who grew alarmed at the frequent outbursts of disorder in the industrial centers, disorders which often led to the loss of life and the destruction of property. The central government also became perturbed over the frequency and seriousness of these riots, which the borough authorities seemed wholly incompetent to handle.[1] The mayor and aldermen, it will be remembered, were the borough justices and it was their function to maintain order.

The Social Incentives.

Other influences, moreover, presently began to be effective. The social exclusiveness of those who composed the close corporations was resented, more and more, by the growing middle class. The doctors and lawyers, the bankers, and the minor gentry, the members of the old town families who monopolized the municipal offices and filled the town councils, were reluctant to admit into their exclusive circle even the well-to-do shopkeepers and small manufacturers—the *nouveaux riches* of the industrial revolution. Hence the master builder, the clothmaker, and the prosperous groceryman found themselves excluded from what they called "the shabby, mongrel aristocracy" which governed the town. What the new plutocrats were seeking was not municipal democracy. They did not ask that the close corporations should be broken open and a share in municipal government accorded to all. They merely asked that they themselves should be taken into the group which wielded the power.

This social discrimination, furthermore, was not the shopkeeper's only ground for umbrage. He had his economic grievances also, because the "freemen" or members of the corporation were exempt from local tolls while other traders were not.

The Economic Impetus to Reform.

In some of the towns a "through toll" was exacted on goods passing over the town streets on their way to another destination. These towns, as a rule, were located at points where, owing to the scarcity of other roads, the traders had no alternative but to pass through them.[1] In some instances the seaport towns levied what were virtually customs duties on imports from abroad, or even from other parts of England. Whatever the impost, members of the municipal corporation were invariably free from it. This special privilege was not of great importance in earlier days when the volume of interurban trade was small, but with the rapid growth of the towns during the industrial revolution the exemption became a conspicuous cause of jealousy.

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[1] After the close of the great war against Napoleon the prevalence of crime and disorder greatly increased throughout England, but especially in the industrial towns. The riots often took the form of machinery-smashing outbursts.

The Growth of Radicalism.

The growth of political radicalism accelerated the current of opposition to the close corporations. To the radicals it mattered little whether the corporations provided the towns with good government or bad. They were non-elective and self-perpetuating, which was enough. They assumed the right to levy taxes, yet gave the people no right of representation. The radicals objected to the whole arrangement in principle and did not condescend to make any list of particular grievances.

The Movement Fructifies.

So long as the country's attention was concentrated upon the reform of Parliament, however, the movement for reforming the government of the towns and cities made slow progress. It was not until the first reformed House of Commons came together in 1833 that the municipal reorganization movement took definite shape. This House, with a large reform majority, was quite ready to act; but there was a striking lack of information on the subject. Borough government rested on a complicated mass of old charters, new charters, laws, and amendments. Nothing was known with certainty as to what powers the borough authorities actually possessed. Parliament, therefore, provided for the creation of a royal commission to investigate the whole subject, to collect information as to existing defects in borough government and to make recommendations for reform.

The Royal Commission of 1833.

This royal commission, made up for the most part of young Whig lawyers, did its work promptly and with great thoroughness. The members visited many of the boroughs, making in each case a precise study of the organization, powers, jurisdiction, and property of the corporation. In all they examined 285 boroughs and within eighteen months from the date of their appointment they laid before Parliament four ponderous volumes of data, together with a summary of their findings.[1]

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[1] In London the toll-officers stopped as many as 2000 carts a day at the various entrances to the city and collected two pence each from all of them not belonging to freemen. The collection of these tolls gave rise to numberless disputes between cart-drivers and toll collectors. Fist fights were of daily occurrence.

What It Found.

In most of the boroughs, according to the commission's report, the governing authorities consisted of a mayor, aldermen, and common council. Ordinarily the aldermen and councilmen sat together, with the mayor as their presiding officer. All were elected annually by the "freemen" or members of the corporation, who constituted about five per cent of the population on the average. In some places, the percentage was a good deal higher than this; in others it was ridiculously low. Liverpool, with a population of 165,000, had about 5000 freemen; Portsmouth, with 46,000 inhabitants, had only 102. This small category of burgesses, many of whom were non-resident, elected all the town officials, and chose the borough's representatives in Parliament. The council's meetings were almost invariably secret, and as a rule no report of the proceedings was ever issued.

Evils and Abuses.

In some of the boroughs the commission unearthed a good deal of crookedness and incompetence. Local offices, in some places, had been distributed to relatives of the councilmen with no regard for their personal qualifications; in others there were non-resident officeholders who drew their pay with unfailing regularity but performed no official functions at all. Occasionally an influential freeman held several offices. The funds of the corporation were being drawn upon, in some instances, to pay for the entertainment of common councilmen and their friends; while valuable corporate property had been deeded over, in some boroughs, to individual freemen. Here and there it was found that town property had been leased to friends of the councilmen at a nominal rental or at no rental at all. The borough accounts, as the evidence disclosed, had been sometimes kept in such loose and irregular ways that waste and even peculation went on without much chance of their being discovered.

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[1] Although the commissioners investigated 285 towns, there were 39 in which they found no municipal corporations at all. In some others all information was refused. In a few the data was not compiled in time for publication in the report. But the investigations included all the larger municipalities. The 212 boroughs covered by the report included a population of about 1,800,000, or practically one-seventh of England's total at the time.

The commission's report was issued in two installments. The *First Report of the Municipal Corporation Commission*, appeared in April, 1835. It was published in five volumes. The first volume contained a "General Report" or summary of the commission's findings; the other four were filled with the evidence which the commission gathered. This first report did not include London. In 1837 the commission issued its *Second Report*, a single volume dealing with London. In 1839 an analytical index of the *First Report* was prepared and published. One of the commissioners issued in 1835 an unofficial summary of results (A. E. Cockburn, *The Corporations of England and Wales*, London, 1835). The four volumes of evidence appended to the *First Report* furnish a vast store of data for the municipal antiquarian. "For systematic accuracy, lucidity and completeness" they stand unrivalled among modern government reports. Sidney and Beatrice Webb, *English Local Government*, Vol. III, p. 717.

Its Conclusions and Recommendations.

The summary which the commission presented to Parliament would lead one to believe that these things were common in practically all the towns; but a study of the evidence appended to the report does not support any such conclusion. In the majority of the boroughs the commission found no evidence of any conspicuous wrongdoing, at least it included none in its four ponderous volumes. Nor does it appear that conditions were worst in those boroughs which had the closest corporations. In the few boroughs where the list of freemen was relatively large the same sort of evils existed. Nevertheless the commission reached the conclusion that government by close corporations was extravagant, incompetent, and a temptation to dishonesty. "Where not productive of positive evil," it declared, "these corporations, in the great majority of instances, are rendering no useful service." This may have been true; but it is a conclusion which no impartial mind would draw from a survey of the evidence which accompanies the commission's report. Individual cases of wrongdoing the evidence discloses quite freely, but not enough to warrant the inference, much less the conclusion, that English borough government prior to 1835 was honeycombed with corruption.[1] With the close corporations in control the marvel is that things were not a great deal worse.

Defects of English Municipal Government Prior to 1835.

The two fundamental defects of the English municipal system prior to 1835 were its non-representative character and its freedom from any effective supervision by the national authorities.

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[1] "The commissioners were possessed by an abstract belief in the inherent rightfulness of popularly elected bodies, and by an overwhelming desire to get these established. . . . Their General Report was not the result of any analytic survey of their own evidence. . . . Both as a summary of the facts and as an analysis of causes, the General Report is inaccurate and misleading." Webb, *English Local Government*, Vol. III, pp. 719, 721.

1. Lack of Democracy.

The non-representative status of the governing authorities had been no serious shortcoming in the earlier days when service in municipal office was a burden, rather than a privilege. It became so in the nineteenth century when conditions changed. No longer could a local government be satisfactory, however honest or skilful, unless it carried with it in the public mind "a consciousness of consent." Without this it was bound to find its operations restricted to a point where it could not be efficient.

2. Lack of Central Control.

Lack of central supervision was also tolerable in the earlier days of small communities and scant intercommunication. The corporation, for a price, had purchased the freedom of the borough from the king. The freemen deemed themselves entitled to take account of no interests wider than those of their own community. That was all well enough so long as municipal functions had a purely local significance, but the incoming of the nineteenth century, with its enormous expansion of industry, trade, and population, bound the interests of one town more closely to those of others. Some of the most flagrant evils of the old municipal order arose from this extravagant emphasis upon the assumed right of each borough to be a law unto itself and to utilize its own special privileges in ways that were detrimental to its neighbors.

The Municipal Reform Bill of 1835.

When the commission's report went before Parliament the Ministry at once came forward with a bill for the reform of the municipal corporations. The measure was simple in form and broad in its scope. Instead of trying to straighten out the tangled web of local jurisdictions, it provided that there should be established in each borough an elective town council endowed with all the powers formerly pertaining to the corporation. In addition, the town councils were to have some powers which the corporations did not possess, particularly in the matter of licensing. On the other hand, it was provided that the borough magistrates, who had hitherto been named by the corporation, should hereafter be appointed by the crown. This provision was a disappointment to the radicals who greatly desired to see the administration of local justice placed on an elective footing. The members of this council were to be chosen, uniformly, by all taxpaying householders of three years' standing. The term of each councilman was to be three years, with one third of the council's membership retiring annually. The measure was to apply to 183 boroughs, including all places of any considerable size except London. London was to be dealt with in a separate bill.[1]

Its Enactment By Parliament.

In the House of Commons the bill met with surprisingly little opposition, even from the Tories, which is an indication that the need for a reform of the municipal system was pretty generally conceded. In the House of Lords there was some danger that the entire bill would be rejected or at least amended in such way as to make it innocuous to the conservatives; but in the end the leaders of the two chambers succeeded in effecting a series of compromises. The most important of these was a provision that the councilmen, themselves elected for three years, should choose one-third of their own number to be aldermen for six years. This arrangement, it was thought, would render the council more stable in its organization. With this and other changes the bill was passed and went on the statute book as the Municipal Corporations Act of 1835.[2]

Was It a Municipal Revolution?

The enactment of this measure has sometimes been referred to as a municipal revolution, but it scarcely deserves the name. It is true that the oligarchies which for many generations had ruled the boroughs were now ousted, and that town councils chosen by direct popular suffrage now reigned in their stead; but the continuity of English municipal development was not rudely disturbed. No sweeping changes were made, either in the general frame of borough government or in the relations of municipal to central government. The Act of 1835 was not a revolution in the sense that the French decree of 1789 may be so called. Some considered it a greater blow to Toryism than the great reform measure of 1832 had been; but it did not prove to be so. In most of the boroughs the higher ranks of the citizenship, which before 1835 had filled the borough offices by choice of the corporations, continued to fill them by elections at the hands of the taxpayers. Long after 1835 the government of the English towns was in the hands of the "governing classes."[3]

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[1] It was not dealt with, however, for many years.

[2] 5-6 William IV, Ch. 76.

[3] From time to time during the next half century the Act of 1835 was amended and in 1882 a general recodification took place. This code, known as the Municipal Corporations Consolidation Act, is still the basis of English borough government.

Recent Growth of English Cities.

From 1835 to 1914 the progress of the English cities in population and economic importance went on with hardly a setback save for the four years of the American Civil War when the interruption of raw cotton imports bore heavily upon the textile towns. In 1801 the total population of England and Wales was about nine millions, of whom less than thirty per cent were in cities; by 1900 the total had risen to more than thirty millions, of whom more than seventy per cent were in the cities. London, with less than 900,000 in 1800, had nearly two and a half millions in 1850, and about five million in 1900.

Today the population of Metropolitan London is above seven millions, which means that one Englishman in every six is a Londoner. In England there are no other cities of over a million, but Scotland has one such city—Glasgow. Birmingham, Liverpool, Manchester, and Sheffield have each more than half a million, while there are several other cities, including Bradford, Leeds, and Newcastle, with populations exceeding 200,000. The backbone of the urban population is to be found in the large number of medium-sized and small industrial communities, places of from ten to a hundred thousand people centered around different types of industry. There are whole sections of the country in which the traveller is no sooner out of one factory town than he is into another; his journey seems to carry him through endless groups of brick mills and workmen's tenements. It is these factory boroughs that give England its rank as the *locus classicus* of urban concentration.

REFERENCES

There is no single book dealing with the growth of cities from the beginning of the sixteenth century to the beginning of the nineteenth. A volume on this subject would be of great service. A. F. Weber's *Growth of Cities in the Nineteenth Century* (New York, 1899), covers the period, 1800-1890.

Not only do we lack a treatise giving a general survey of the field, but there is unhappily no serviceable bibliography or finding-list to which the student can be referred with the assurance that it will guide him to the material which lies embedded in the political, social, and economic chronicles and histories as well as in the books relating to individual cities. To set down even the most important titles among these general histories of Europe, and of the various western European countries, not to speak of the local histories, would take many pages.

The student who desires to follow up any line of study suggested by the foregoing chapter will do best, on the whole, to consult the bibliographical lists which are appended to the several volumes of the *Cambridge Modern History* (14 vols., New York, 1902-1912), a work which is generally accessible in college and public libraries. The lists there given are of varying merit; but they are all conveniently classified.

CHAPTER IV

MUNICIPAL DEVELOPMENT IN THE UNITED STATES

The Miracle of American National Growth.

An Equally Remarkable Evolution in City Government.

American cities are the product of the nineteenth and twentieth centuries. In 1790 the largest American city, Philadelphia, had less than 60,000 people. Today a community of this size would not find rank among the hundred largest cities of the United States. This great urban movement, covering one hundred and thirty-odd years, is without a parallel in history. It is accounted for, in large measure, by the growth of the American population as a whole, a scale of growth that was never known before and will probably never occur again. The United States doubled its population four times in about one hundred years. The country had about four millions in 1790, eight millions in 1813, sixteen millions in 1838, thirty-two millions in 1864, and sixty-four millions in 1891. It will probably attain its fifth doubling in 1940 or thereabouts. While it is not surprising that a new country with great natural resources should have grown rapidly in population, no one could have predicted, a century ago, that the urban population would increase more rapidly than the rural, as has been the case. But the cities have grown fast and are growing faster. This growth has brought serious problems with it, problems very difficult of solution as the people of the United States have now come to realize.

The Four Periods of Development.

The history of American municipal development, which affords an interesting study in political evolution, is commonly divided into four periods. The first includes the colonial era down to the close of the Revolutionary War. The second extends from this time down to about 1840, that is to the end of the Jacksonian era. The third covers the rest of the nineteenth century, and the fourth runs from about 1900 to the present day. It should always be remembered, however, that few American political institutions really began their history on this side of the Atlantic. And this is as true of municipal institutions as of any others. Strictly speaking, therefore, the colonial era does not represent the first stage in the evolution of the American municipality, but only the first stage of growth in a new environment. This admonition might seem to be superfluous were it not that so many writers have been inclined to describe American municipal institutions as though they were, like Indian corn or tobacco, the indigenous product of the soil.

1. *The Colonial Era*

The English Background.

During the period of the English migrations to America the system of borough government by close corporations was in full flourish at home.[1] The royal authorities looked upon it as a convenient method of keeping Parliament in bounds through the control of the borough members. On the other hand, the people of the English boroughs had not yet become restive under this form of municipal administration. The corporation, oligarchic though it might be, stood between the people of the borough and all outside authority. In an age of arbitrary royal taxation this was an important protection and the people valued it as such. Government by a few of their own fellow townsmen was at all events better than government by the appointive minions of the king. However difficult it may be for us nowadays to conceive of a free people resting submissively under the sway of local oligarchies it is none the less an error to suppose that the form of borough government which existed in England throughout the seventeenth and eighteenth centuries was highly unpopular there. Not until after 1820 did it become unpopular as has already been shown.

Why the English Plan Was Brought Over.

The system of borough government was transplanted from England to America, therefore, because the royal authorities liked it, and because the people did not dislike it. It is not surprising that the policy of the crown should be to favor, if not to command, the transplantation of English institutions to the colonies—no more surprising, indeed, than is the action of Congress in exporting to the Philippines such thoroughly American institutions as the executive veto, senatorial confirmation of the governor's appointments, and the elective mayoralty. The colonists, so far as the records indicate, raised no objection. Close corporations, like the common law and the jury, were traditional English institutions; it was as natural for the one as for the

[1] See above, pp. 71-73.

others to follow the flag across the Atlantic. Borough charters were not "imposed" upon the colonial towns of America. There is no evidence that the people of any American community ever had a borough charter forced upon them. The charters were granted, as a rule, upon petition of the leading townsmen. The New England towns did not ask for borough charters and none were issued to them. They preferred their own system of town government and were freely permitted to keep it.

The Earliest Borough Charters.

The beginnings of the American municipal system are to be found in the granting of the borough charters to some of the more important colonial towns during the period 1686-1746.[1] New York was the pioneer, receiving its first regular charter from Governor Dongan in 1686.[2] Albany followed a few months later in the same year. The New York charter, following the established practice with respect to borough charters in England, provided that the members of the common council should form a corporation under the name of—"the Mayor, Aldermen and Commonalty of Y^e^ City of New York." The corporation was empowered to own property, to have a corporate seal, and to maintain or defend suits at law. The common council was to be composed of six aldermen and six assistants chosen annually by the six wards into which the borough was divided. The mayor and the recorder were to be appointed by the governor but were to have seats in the council, making the membership of that body fourteen in all. The council was authorized to make "laws, orders, ordinances, and constitutions" for the bor-

The New York Charter of 1686.

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[1] Two borough charters were granted prior to 1686, that of Agamenticus in 1641 and that of Kittery in 1647, both situated on what is now the coast of Maine. Neither of these charters went into active operation. In 1656 a local government had been organized in New Amsterdam by Governor Stuyvesant on petition of the inhabitants who then numbered about one thousand; but in 1665 the town passed into English hands and the form of its government was changed to that of an English municipal corporation although no formal charter was granted. The burgomaster, schepens and schout of the Dutch régime gave place to the mayor, aldermen and sheriff. Some of the Dutch officials continued in office, however, and for several years the city records were kept for the most part in the Dutch language.

[2] The Dongan charter of 1686 was granted, under instructions from the Duke of York, on petition of the mayor and aldermen. It is still preserved in the archives of the comptroller in New York City; a copy may be found in the *Colonial Laws of New York* (5 vols., New York, 1897), Vol. I, p. 181 *ff*. For a summary of its provisions, see A. E. Peterson and G. W. Edwards, *New York as an Eighteenth Century Municipality* (2 vols., New York, 1917), Vol. I, pp. 14-19.

ough, but with the limitation that such measures must not be repugnant to the laws of England, and to impose reasonable fines upon offenders. Likewise it could appoint minor officials.

Other Colonial Boroughs.

In 1691 Philadelphia was organized under a borough charter; and others followed in due course—Annapolis in 1696, Perth Amboy in 1718, Williamsburg in 1722, Norfolk in 1736, Richmond in 1742 and Trenton in 1746. Several smaller places also received charters during the period, making the entire list about twenty. All of them were in the middle or southern colonies; there were no active boroughs in New England, for there the system of town government which afforded the inhabitants a greater degree of local freedom than could be obtained by adopting the borough system. The initiative was never taken by the English authorities or by the colonial governor, it being clearly understood as a matter of law and custom that no corporation could be created by royal charter without the assent of the persons directly concerned.[1] In some instances the charters were submitted to the inhabitants for their acceptance or rejection. No new borough charters were granted from 1746 to the Revolution. This may have been due to the growing estrangement between the home government and the people of the colonies, the towns included. In all cases the borough charters were granted by the governor, in the name of the crown, or by the colonial proprietor—they were never given by the colonial assembly. This was in strict accordance with the common law and practice in England where the borough charters, down to 1835, were based upon the royal prerogative and not upon acts of parliament.

Variety and Uniformity in Colonial Borough Government.

Among the boroughs of England there was no uniformity in charter provisions because these charters had been granted by different kings, at different times, and under different circumstances. Nevertheless they all tended toward the same pattern so far as essentials were concerned, and the same is true of the borough charters which were granted in the American colonies. No two of them were exactly alike, yet no two were very different. One and all they provided for a governing body which the charter endowed with the corporate powers of the community and to which it gave a considerable range of authority. This body, usually designated as the "mayor, aldermen and commonalty" of the borough, was made up of all the chief officers sitting together. It contained a varying number of aldermen and councilmen (or assistants) both of whom were elected, as a rule, by popular vote—one or more from each borough ward. In three boroughs—Annapolis, Norfolk and Philadelphia—the charters did not provide for popular election but made the council a self-perpetuating body. The council also included the mayor, and, as a rule, the recorder. The mayor was in no case elected. In most boroughs he was appointed by the governor; in the three close corporations above mentioned he was chosen by the council. In any case his term was a single year, but reappointments were customary and a mayor sometimes remained in office for ten years or more. He was the council's presiding officer and had the same voting rights as the other members.[1] But he made no appointments except by authority of the council and had no authority to veto any of the council's acts. The charters usually enjoined the mayor "to see that the by laws and ordinances were duly executed" and to this end he was empowered to preside in the borough court.

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[1] H. W. Rogers, "Municipal Corporations in the Colonies" in *Two Centuries Growth of American Law* (New York, 1901), p. 218.

The Council and the Mayor.

Judicial Functions.

As in the English boroughs of the time, the mayor, recorder, and aldermen of each colonial borough ranked as colonial magistrates with jurisdiction over minor offenses. The mayor usually held court, assisted by the recorder as his legal adviser. For the trial of important cases, the mayor, the recorder, and the aldermen sat together in general sessions, as was the custom in boroughs overseas. This judicial authority counted for much less in the colonies than in England, however, for the population was sparse and there was relatively little court work to be done.

The Municipal Suffrage.

It has been mentioned that the aldermen and councillors were chosen, in most of the colonial boroughs, by popular vote. But nowhere did this mean manhood suffrage. Property and religious qualifications were usually prescribed; their strictness varied from place to place. The freemen of the borough were a privileged class, as in England; although in America they formed a far larger percentage of the borough population. The "liberties of freemen" were thought to be such as to require men of substance and faith. Nevertheless the American boroughs gave their freemen a privilege not accorded in England,—that of using a secret ballot. In the English boroughs, all voting was *viva voce*. The freeman entered the poll; the polling officer asked him to state his choice, which the freeman proceeded to do in a loud voice amid the applause of those hangers-on who approved. In some of the American boroughs the same procedure was followed; but in others each voter wrote the name of his choice on a slip of paper and put it in a ballot box, or in a hat, as was the custom in ancient Greece. One objection to this plan was that it tended to restrict the suffrage to those who could write.[1]

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[1] Philadelphia was an exception. There the mayor had no vote at council meetings.

Administrative Functions.

There was very little administrative work for the borough officials to do. Most of the boroughs were so small that they did not need any elaborate provision for municipal services. In 1700 Boston was the largest urban community in the northern colonies; its population was then nearly 6700. Philadelphia and New York had about 4500 each. In 1760 Philadelphia had risen to first place with a population of 18,000. On the eve of the Revolutionary War there were only five cities and towns with populations exceeding 8000.[2]

Backwardness of the Municipal Services.

Besides being small, these boroughs were poor and backward. The entire municipal revenue of New York in the middle of the eighteenth century was less than £1000 per year, practically all of which was obtained from market fees, dock charges, and ferry tolls. Only a few of the city streets were paved, and these very crudely with cobbles or flag-stones. Every householder was required by ordinance to sweep the street in front of his door but the requirement was not rigidly enforced. The general topography of the lower end of Manhattan island was such, however, that the rainstorms served as tolerably effective street cleaners. The gutters ran in the middle of the street, and after a heavy rain they became good-sized rivulets, bearing the filth and rubbish of the town to the sea. There were no public sewers; there was no public water supply, no public lighting. Every seventh house was required to hang out "a lantern and candle" on dark nights during the winter season; the expense was shared equally by the inhabitants of the seven houses concerned.[1] The alderman and councillor of each ward were instructed to see that this order was obeyed. The borough authorities had little or nothing to do with poor relief or education. Their main function, apart from holding the local court and making the by-laws, was that of regulating trade and supervising the markets.

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[1] Voting by proxy was permitted in some of the New England towns but not, apparently, at elections in any of the boroughs.

[2] Philadelphia, New York, Boston, Charleston and Newport. Today there are 924 places of over 8000.

Municipal Revenues.

With the growth of the boroughs after 1750, however, the corporations found that the needs of the people were becoming more urgent, and as the original borough charters did not convey any taxing power to cover the new expenditures they applied to the colonial assemblies for the power to tax. This power could only be granted by the colonial legislatures, and not by the governors. The assemblies gave the borough authorities the right to tax the inhabitants, at first to a very limited extent. At the outset this taxing power was restricted to the raising of a definite amount for some specific purpose, such as the building of drains or the maintenance of a night watch. In time, however, the assemblies assumed a more generous attitude and by the middle of the eighteenth century the power to levy a general direct tax had been granted to most of the larger boroughs.

Drifting Away from the English Model.

Almost from the first, therefore, the American boroughs began to drift away from the English model. Close corporations were the rule overseas; they were the exception in the New World. In England the mayor was far from being a mere figurehead; his part in borough administration was important. He appointed most of the borough officials; he often administered the borough property and made regulations relating to trade. In colonial America, however, the powers of the corporation were absorbed by the council; the mayor's functions, save in judicial matters, were subordinate to its control. In the new environment the office lacked much of the strength and prestige which tradition and precedent had given to it at home. In England there was absolutely no central control of the boroughs prior to 1835; the only way in which the king could coerce a borough was by securing from the courts a decree revoking its charter. In the American colonies, on the other hand, the governor could exercise a good deal of supervision through his power to appoint the mayor, and the assembly was always in a position to bring the corporation to terms, if need be, by refusing it power to tax the inhabitants. Both in England and America, however, the boroughs had one outstanding similarity. In none of them was there any separation of legislative, executive, and judicial functions. All three were vested in the same hands. It was not until after the Revolution that the idea of separating the three functions of government came to the front in America.

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[1] A. E. Peterson and G. W. Edwards, *New York as an Eighteenth Century Municipality* (2 vols., New York, 1917), Vol. I, p. 104.

2. *From the Revolution to About 1840*

Effects of the Revolution Upon the American Municipal System.

A new country is like the human embryo in that it passes rapidly through the lower phases of development and evolves to the type of the parent stock, but with various modifications. The new-world atmosphere began in 1776 to exert its full influence upon the development upon American institutions and the winning of independence brought into the American municipal system some radical and far-reaching changes. The power to grant charters no longer rested with the governor; it passed into the hands of the state legislature.[1] The city charter became a statute, and as such it might be amended or repealed like any other statute. Some of the new state constitutions expressly recognized this transfer of power from the governor to the legislature. The New York constitution of 1777, for example, provided that the colonial borough charters should remain in force and the city officials continue to exercise their old powers "until otherwise directed by the legislature."[2] This qualifying clause is very significant for it heralded the end of municipal independence. Prior to the Revolution no charter could be imposed upon a town by the governor without its own consent, nor could the colonial assemblies impose upon the chartered boroughs any provisions of law which were repugnant to the terms of their charters. All this now went overboard. The boroughs passed completely under the power of the legislatures except in so far as the state constitutions placed restraints upon legislative discretion.[3] The

The Legislatures Take Control of the City Charters.

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[1] In the state governments which were established after the Revolution the position of the governor was of relatively small importance. The legislature was the dominant organ of government. "The executives of the states," said Madison in the constitutional convention of 1787. "are in general little more than ciphers; the legislatures are omnipotent."

[2] Article xxxvi.

[3] The state constitutions sometimes did this, e.g., in Massachusetts where the legislature was forbidden to impose a city charter upon any town without its own consent.

Revolution did not inaugurate a period of increased freedom for the boroughs. On the contrary, it opened the way for incessant legislative interference, leading to the virtual extinction of municipal home rule which took place during the nineteenth century.

The Earliest Post-Revolutionary Charters.

The earliest charters granted by the new state legislatures did not differ greatly from those which had been in operation prior to the Revolution except that the close corporations were everywhere abolished. In Philadelphia, for example, the city charter which had been granted by Penn in 1701 was declared to be abrogated. For a time the city got along without any organic law at all, but when the war was over the citizens petitioned the legislature for a new charter and their petition was granted in 1789. The Philadelphia charter of 1789 continued the government of the city in a single council, made up of mayor, aldermen and common councilmen, the mayor to be chosen by the aldermen from among their own number. In some other cities the new charters continued the plan of having the mayor appointed by the governor. While the close corporations were abolished, the right of voting at municipal elections and of holding public office in the city was still restricted to freeholders or freemen.

Philadelphia Charter of 1789.

The Baltimore Charter of 1797.

Before very long, however, the charters began to show the impress of new ideas. The principles of government which had been embodied in the national constitution commenced to work their way into the frame of city government. The first clear indication of this may be seen in the Baltimore charter of 1797[1] which made provision for a mayor and two-chambered city council. The lower house, or first branch, of the council was to be composed of two members elected annually from each of the eight wards into which the city was divided. The upper house, or second branch, was to contain one member from each of these wards. The charter provided that each ward should choose members of an electoral college which, in turn, was to elect the mayor. Appointments were to be made by the mayor, but they were not made subject to confirmation by the upper chamber of the council as would have been the case if the outlines of national government had been strictly followed. The mayor's selections, however, were to be made from the names on a list of eligible candidates submitted to him by the city council.

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[1] It was enacted in 1796 (Laws of Maryland, 1796, Ch. 68) and became operative in 1797.

Its Significance As Indicating the Influence of the Federal Analogy.

More striking still, as an illustration of the influence exerted by the "federal analogy" upon the framers of the Baltimore charter, is the provision giving the mayor authority to veto the acts of the council subject to repassage by a two-thirds vote of both chambers. Here we find, for the first time, the application of the principle of "checks and balances" to municipal government. The makers of the national constitution had adopted it in 1787, and with good reason, for they feared above all things the concentration of governmental power in a few hands. History was full of such developments and they were on guard against a repetition of it in America. The state governments followed suit, with less justification, because the danger of a possible over-concentration was less in their case. Presently the idea grew into an obsession; it became the cornerstone not only of national and state government, but of city government as well. Men did not stop to ask whether there was any good reason for a system of checks and balances in the subordinate areas of government. They took it for granted that if the principle was valid higher up it must also be valid lower down. At any rate the doctrine became part of the American political creed; it eventually gained recognition everywhere and determined the main channel of municipal development during the whole of the nineteenth century.[1] It should not be assumed, however, that the triumph of Montesquieu's famous dictum was quickly and decisively achieved in this subordinate field of government. It was a slow and somewhat reluctant process. The cities were the last objectives to be captured. In the New England towns and in counties throughout the country it never gained a foothold at all.

"Checks and Balances" Everywhere.

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[1] The influence of the "federal analogy" did not become dominant all at once. While the Baltimore charter shows it very clearly, the systems of municipal government established in some other American cities during the first decade of the nineteenth century betray much less conspicuous indication of it. In the charter of New Orleans (1815), and in that of Detroit (1806), for example, the old practice of having the mayor appointed by the governor was continued. The Baltimore charter of 1797 was merely a prophecy of what was ultimately to come. It was born ahead of its time; but it forecast the emergence of the municipal executive into a position of power and independence.

Other Important Developments During This Period:

Apart from this devotion to the federal exemplar there were three or four important developments in the American municipal system during the first forty years of the nineteenth century. First the office of mayor became everywhere elective. Down to about 1820 mayors had been in all cases appointed by the governor or chosen by the city council; but the Boston and St. Louis charters of 1822 provided that the mayor should be elected by popular vote and the Detroit charter of 1824 contained a similar provision. Other cities followed in due course—Philadelphia in 1826, Baltimore in 1833, and New York in 1834.[1] From the larger communities the plan of direct election spread to the smaller; by 1840 it had become general throughout the country.

1. The Elective Mayor.

This change in the method of selecting the mayor was not made the occasion for any substantial increase in the powers of the chief municipal executive. Neither the Boston nor St. Louis charters gave the mayor any authority to appoint city officials, nor did they bestow upon him the right to veto acts of the council. But in giving the mayor the function of presiding at council meetings, and of appointing all its committees, these charters paved the way for the exercise of strong mayoral influence on administration. This was made clear by Josiah Quincy, the second mayor of Boston, who managed to become the dominant factor in every branch of the city's work by appointing himself chairman of all the important council committees.[2] Being elected by the people, and responsible to them alone, the mayor now occupied a strategic position. Josiah Quincy was merely the first to make use of its possibilities: he was a utilizer of things present and a prophet of things to come. A further significant step in the direction of making the mayor a co-ordinate branch of city government was taken when New York City

Significance of This Change.

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[1] The mayors of New York city were appointed by the governor until 1821; from that date to 1834 they were chosen by the city council.

[2] This action drew much criticism upon Mayor Quincy's shoulders. "The mayor assumes too much himself," declared his critics. "He places himself at the head of all committees. He prepares all reports. He permits nothing to be done but by his own agency. He does not sit solemn and dignified in his chair, and leave general superintendence to others; but he is everywhere and about everything,—in the street, at the docks, among the common sewers;—no place but what is vexed by his presence." Three Quincys were mayors of Boston during the nineteenth century, father, son, and great-grandson.

definitely gave him the veto power. One by one other cities did likewise.

2. The Election of the Administrative Officers.

A second development which had its beginning during this period was the popular election of administrative officials other than the mayor. Everywhere, down to about 1824, these officials (assessors, collectors of taxes, constables and so on) had been chosen by the council. The Detroit charter of 1824 provided for their election by popular vote. Other cities were slow to follow this precedent and for some years the council managed, throughout the country, to retain its appointing power. The rising tide of democracy, however, gradually undermined this plan, especially in the newer cities which sprang up west of the Alleghenies. There was a feeling that administration ought to be kept close to the people by giving the voters direct control over the election of all their local officers.

3. The Extension of the Suffrage.

The widening of the suffrage is the third feature of the period. There is widespread popular impression in the United States that manhood suffrage came into vogue throughout the country on the heels of the Revolution. Had the actions of the Fathers been as revolutionary as their theories this doubtless would have been the case; but in no one of the thirteen states were the pronouncements of the Declaration carried to their logical conclusion. Restrictions upon the suffrage continued to exist in nearly all the states until the nineteenth century was well under way.[1] During the Jacksonian era, however, a movement for the abolition of all restrictions upon manhood suffrage gained great momentum and most of the barriers were speedily broken down. In the new Chicago charter of 1837, for example, the taxpaying qualification was reduced to three dollars, and in 1841 it was abolished altogether.

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[1] In some the requirement was that voters should own at least fifty acres of land or an equivalent amount of property in some tangible form. In others the suffrage was confined to taxpayers. These requirements applied to municipal and state elections alike. Within a decade after the close of the Revolution one or two states abandoned the property requirements and admitted all taxpayers to voting rights. Vermont, which came into the Union in 1791, was the first state to establish full manhood suffrage; Kentucky and New Hampshire followed during the next year. Other states were created in the ensuing three decades but not all of them were ready to go so far. The anti-suffragists of these days waged a bitter struggle, hard-fought all the way. It has been estimated that not more than twenty per cent of the adult male population of the cities possessed voting rights in 1830.

4. Rise of the Spoils System. Finally, the spoils system made its *début* in local politics at this stage of American municipal development. Commonly attributed to Andrew Jackson, the introduction of party patronage was in reality an older feature of American political life. Jackson and his friends merely called it by its right name and avowed their allegiance to it openly. In the cities the practice of appointing to office men who had rendered party service, and of displacing from office men who had incurred the antagonism of the political leaders—these practices far antedated Jackson's first term. As early as 1816 the spoils system was flourishing in New York City.[1] The power to appoint municipal officers rested for the most part with boards of aldermen everywhere, although in a few cities some of the higher administrative officials were chosen by direct popular vote. The aldermen acted, as a rule, on the recommendation of an appointment committee which did its work on the principle that each ward should have a share of the patronage. City elections were fought out on straight party lines, with no distinction between local and national issues. The New York municipal election of 1831 was waged entirely upon the issue of Andrew Jackson's popularity. Tammany capitalized this popularity and won. Elections in most of the cities were held annually and overturns were frequent. This, combined with the current notion that there should be rotation in office, took away all chance of stability in local administration. Rarely was any municipal officer permitted to remain at his post long enough to develop an adequate acquaintance with his duties.

Summary. These four features, namely, the elective mayor, the election of other administrative officials, the extension of the suffrage, and the genesis of the spoils system gave American city government some dominant characteristics which it retained throughout the remainder of the nineteenth century. They charted the course for the next fifty years. By 1840 there had been a complete departure from the old colonial traditions, and even from the system of borough government which had existed during the years immediately following the Revolution. The cities had definitely committed themselves to the system of checks and balances, the fusion of state and city politics, and the spoils system—three distinctively American contributions to the art of government.

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[1] Gustavus Myers, *History of Tammany Hall* (2d ed., New York, 1917), pp. 37-38.

Slow Growth of the Cities in Population, 1780-1820.

Until after 1800 the growth of American cities was not rapid although the urban population increased somewhat more quickly than that of the rural districts. The *fin de siècle* boroughs and towns of the United States, even the largest of them, were not industrial centers. They were markets where the country's products were exchanged for the manufactured wares of England. A few of the larger towns in Massachusetts, Rhode Island, and Connecticut had made some progress in industry, but the products of their artisan labor were limited in variety, simple in character, and formed only a small fraction of the total trade. New York, Philadelphia and Baltimore owed their early growth to the fact that they were the natural markets of a productive agricultural country.[1] Due to the lack of industry all the cities progressed very slowly. In 1780, as has been said, there were five cities and towns having more than 8000 inhabitants; in 1820 there were only thirteen. The total urban population in the former year was about 131,000, or 3.35 per cent of the whole; in the latter year it was about 475,000, or about 5 per cent of the whole. This gain of less than two per cent in forty years can hardly be accounted extraordinary.[2] It is less than the gain in urban population that has been recorded in every single decade during the past hundred years. In a few of the larger communities, however, the growth was much more rapid than in the towns as a whole. New York, which started the nineteenth century with a population of 60,000, doubled this figure during the next twenty years.

The More Rapid Growth Between 1820 and 1840.

But between 1820 and 1840 the cities forged ahead. The building of canals and turnpikes, followed a little later by the building of railroads, stimulated both commerce and industry. Before the opening of the Erie canal in 1825 the cost of moving a ton of freight from New York City to Buffalo was about $100, and the time consumed was rarely less than three weeks. The canal reduced the cost to $10 and the time to eight days. This reduction in both the time and cost of transportation gave a great impetus to the growth of cities and towns in the middle west. Buffalo, Cleveland, and Toledo went forward with rapid strides. Other canals in various parts of the country performed a like service. The railroads, when they came, accelerated the movement. By 1840 there were 3000 miles of railroad in the United States, chiefly in the eastern part of the country. These early lines were mainly intended for passenger service; prior to 1840 it was not generally believed that the railroads could successfully compete with steamships and canal boats in the carrying of heavy freight. At any rate the new facilities meant much to the cities everywhere, for they helped to remove the most difficult obstacle which had faced them in earlier days, namely, that of bringing to the urban industries a supply of raw materials and affording them convenient access to a wide market. In 1840 there were 44 cities of over 8000 population; together they contained nearly a million and a half inhabitants, or about eight and a half per cent of the national population.

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[1] E. C. Semple, *American History and its Geographic Conditions* (Boston, 1903), p. 339.

[2] From 1810 to 1820 the cities held their own and no more. This was due in large measure to the cessation of trade with Europe during the War of 1812, which caused a severe depression in the cities along the Atlantic seaboard.

Its Causes.

Continued Backwardness of the Municipal Services.

But the growth of municipal services did not keep pace with the increase of population. New York, the metropolis of the New World, had in 1840 a population of nearly 400,000. Nevertheless only a few of its streets were paved and still fewer of them were kept clean. Even cobblestone pavement was expensive in these days. Occasionally, in the interest of economy, the center of the street was built of gravel while cobbles were laid next the sidewalks. The principal thoroughfares were lighted with oil lamps until after 1840 when gas began to be used. Washington, the national capital, had no street lights at all in 1840, and it was not until 1853 that the whole length of Pennsylvania Avenue was lighted by gas. Until 1842, when the new Croton supply became available, water was supplied to New York by means of bored wooden logs laid underground from a reservoir in Chambers Street. Policing was in the hands of constables and watchmen; there was no day patrol until 1837. For fire protection the city depended upon volunteer companies—several of them—between whom bitter rivalry developed and frequent fights took place.[1] The houses of the well-to-do were

New York in 1840.

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[1] "Engines were stolen; clubs, pipes, wrenches and other weapons were used, and the affrays generally closed with stabbings and broken skulls." Gustavus Myers, *History of Tammany Hall* (2d ed., New York, 1917), pp. 131-132.

mostly built of brick, but the poorer classes lived almost entirely in wooden tenements. Veritable fire traps they were and often badly crowded. A beginning had been made in public sanitation but the health conditions were bad and epidemics of all kinds were of frequent occurrence. The city passed few years during this period without a scourge of some sort.[1]

3. *From 1840 to 1900*

The Banner Decade of Urban Growth.

The rapid growth of the cities, which had begun about 1820, continued to gather momentum as the middle of the century approached, and during the decade 1840-1850 they reached their maximum rate of increase. Several factors accounted for this. The country enjoyed peace both at home and abroad. A great mercantile marine had been built up; the "clipper ships" were carrying American commerce to all parts of the world. The cities of the Atlantic Coast derived great economic benefits from this seaborne trade. The industries of the country, particularly those of the older northern states, developed at a rapid pace during these years. The South was concentrating its attention upon the production of cotton and other staples for export to Europe; in none of the southern states were there any important industries. The protective tariff placed a handicap upon industrial imports; hence the industrial centers of the North gained control of the southern market. The process of westward expansion, now quickened by the march of the railroads, also reacted favorably upon the industrial regions of the East. The stream of immigrants from European countries, which had begun to flow in the thirties, increased greatly in volume during the latter forties—especially after the Irish potato famine of 1847 and the German Revolution of 1848. So the cities con-

Reasons for the Urban Boom.

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[1] Boston was worse off than New York. Some years ago I heard President Eliot of Harvard University, who was born in Boston on March 20, 1834, describe conditions in that city during his early boyhood. "There was no public water supply," he said. "Water for household use was brought in buckets from neighboring wells. There was no sewer in the entire town, although it had a population of more than 50,000, and no pavement except a cobblestone pavement in a few of the principal streets. There were no street lights to speak of,—only a few scattered whale oil lamps. Protection against fire was afforded by a hand pump and a voluntary bucket brigade." From this situation to the highly organized municipal services of today is a far call; but the entire transformation has come within the span of a single lifetime.

tinued to multiply. In 1850 there were 85 of them with populations exceeding 8000; ten years later there were 144. Not in the East alone but in the new states of the Middle West the urban movement disclosed itself. Chicago, which was a mere village with fewer than a hundred inhabitants in 1830, had 5000 people in 1840 and 50,000 in 1850. The supremacy of New York, with 800,000 people in 1860, was now fully assured.

Effects of the Civil War on City Growth.

The Civil War, while it lasted, naturally placed a damper upon city growth, although not so much of a handicap as might have been expected. The stream of immigration from abroad was smaller than it doubtless would have been had peace continued; yet the immigration was larger in 1863 than it had been in any of the years immediately preceding the war. The sea-borne commerce declined; but most of the factories kept working at full speed. The clash of arms did not reach far into the regions of industry. Industrially the North was more active and more prosperous than ever before; the output of raw material from the farms, the mines, and the forests was unusual; the growth of manufacturing and transportation was extraordinary; all departments of economic enterprise were speeded up.[1] With the exception of the cotton mills, which found greater difficulties in obtaining raw material, the factories everywhere increased their production. Woolen goods, boots and shoes, agricultural machinery, hardware, as well as munitions of war, were in great demand. The progress of the woolen mills, many of them located in New England and New York, was especially remarkable; their output more than doubled during the years 1861-1865.

After the War.

With the end of the war, moreover, conditions were ripe for an epoch of city growth such as the world had never seen. Great tracts of western land were open for settlement. The era of railroad building on a giant scale was just about to begin. The country had committed itself to the policy of protecting its industries by means of a high tariff. Scarcely a session passed but the duties were raised a notch higher. Prices were high; so were wages, and the high level of wages was bound to attract immigrants from Europe. Finally, the country was in an optimistic mood; it had survived a crucial test and had learned to do things in a big way. All this pointed to a great industrial boom, and the signs proved to be correct. The rapidity of the expansion during the eight years following the war was so great that it produced the inevitable reaction, and in 1873 the country found itself in the throes of a severe industrial crisis. But this setback was only for the moment. The march of progress was soon renewed and with a few minor interruptions it outlasted the nineteenth century.

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[1] See the abundant data on this point in E. D. Fite, *Social and Industrial Conditions in the North during the Civil War* (New York, 1910), especially pp. 78-104.

The Dark Ages, 1870-1900.

When cities grow too rapidly the progress of municipal institutions and services usually fails to keep pace. It was so in the United States during the second half of the nineteenth century and particularly so during the three decades which followed the Civil War. This was the era in which many of the large communities had their stiffest fight to overcome governmental inefficiency, to eradicate corruption in municipal office, and to secure a scheme of administration which would promote rather than retard the common progress. It was a prolonged battle and not until after 1900 did the ultimate outcome appear in sight. These years from 1870 to 1900 are the Dark Ages of American municipal history.

Important Developments:

1. Rise of the Independent, Appointive Administrative Department.

Three important features mark the evolution of the municipal system during this period. The first was the rise of the independent administrative department. The city council, as has been pointed out, was the sole administrative authority provided for in the earlier charters. Its administrative functions were performed through various committees, one for each branch of the municipal service. This plan, so long as the cities were small, served well enough; but as they grew in size and presented more difficult problems of administration the committee system proved altogether too clumsy. The introduction of manhood suffrage lowered the caliber of the councilmen; the committees were appointed by a process of log-rolling; their main quest was for patronage in all its forms. In New York the committees spent much of their time "wrangling over appointments and cribbing at the public treasury."[1] The streets were an abomination of

New York's Earlier Experience in This Field.

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[1] These committee meetings according to one chairman of the time were made the occasion for "unreasonable and costly suppers at the city's expense." At these festivities, he continues, the committeemen consumed "such wines as they never in their lives tasted before; choice wines that cost $40 a dozen." Gustavus Myers, *History of Tammany Hall* (2d ed., New York, 1917), p. 69.

filth. Through the lack of sanitation and an adequate public water supply the city had several epidemics of cholera and typhoid. The general dissatisfaction with the committee system caused the New York charter of 1830 to provide that administrative business should be conducted, not by the council's own committees, but by independent officials and commissions. These officials and boards were to be appointed by the council, however, and hence were in a sense under the council's control. In 1849 the next step was taken by providing that they should be chosen by popular vote. In this way the divorce of administrative from legislative functions was gradually accomplished.

Experience in Other Cities.

The example of New York in making this separation was presently followed by other cities. In Cleveland, owing to the failure of the council committees to keep pace with the need for public works, a board of public improvements was established by a charter amendment in 1852, this board being composed of the mayor, the city engineer and three elective commissioners. Thus the entire control of public works was withdrawn from the council and vested in an administrative board. The next forty years witnessed a great extension of this plan. Boards of public works, park commissioners, water boards, sewerage boards, lighting boards, and health boards were set up in cities all over the country. The members of these various bodies were in nearly all cases elected by popular vote for short terms. This development added greatly to the clumsiness of municipal organization; it parcelled the administrative responsibilities among many different authorities, and resulted in much friction among them.

Elective Boards Prove Unsatisfactory.

The system of administration by elective boards was an improvement over its predecessor; but nowhere did it prove entirely satisfactory. Men who enjoyed popularity with the electorate, but who were altogether without administrative skill or experience, sought and obtained election to these various commissions. Once elected they used their official positions to serve personal ends. As the members of each board were usually elected at different times and often by different political parties, there was no cohesion, no unity within the board itself. Unable to agree on positive action it frequently wound up by doing nothing at all. The people of the cities were inclined to blame the mayor when things went wrong; but the mayor had no direct means of controlling officials whom he did not appoint and could

Supplanted by Appointive Boards.

not remove. After some costly experience along these lines, accordingly, the cities took the next logical step, namely, that of vesting the appointment of these officials in the mayor. They did this with some reluctance, for it seemed to be a stroke of counter-democracy, rendering the dependence of city administration upon the people less direct and immediate. And since it was regarded as dangerous to give the mayor the appointing power without placing any restraint upon him, the necessity of obtaining confirmation from the upper chamber of the city council was added as a measure of precaution.

It is difficult to fix any exact date for this transfer of power to the mayor. The tendency antedates the middle of the century, but the actual shifting of authority did not come until after 1850. New York City inaugurated the plan of mayoral appointments with confirmation in 1857, and here, again, the example of the metropolis was soon followed by other cities.[1] The concentration of control in the mayor's hands proved to be a distinct improvement; but the plan of aldermanic confirmation did not, on the whole, function to advantage. Brooklyn in 1882 was the first city to abolish this requirement—a bold stroke it was thought to be at the time. Few cities had the courage to follow Brooklyn's lead until the end of the nineteenth century.

The Balance of Power Shifts to the Mayor.

By these successive steps, covering an interval of sixty years, the dominant influence over administrative affairs passed from the council to the mayor. The shift was due to many causes, but to two in particular. First was the failure of the council, either by its own committees or through its appointive boards, to provide honest or efficient public services. The second outstanding reason may be found in the influence of the federal analogy. In the national government the President appointed all the officers of administration and was responsible for their work. Why not a similar arrangement in the municipalities? The separation of administrative from legislative functions seemed to be, by reason of experience in the higher fields of government, a good principle to follow.

The subordination of the city to the state began with the win-

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[1] "Out of twelve representative cities five made some progress toward vesting the mayor with various measures of authority over appointments, and four of them vested in him either complete or partial supervisory powers over administration." R. M. Story, *The American Municipal Executive* (Urbana, 1918), pp. 30-31.

2. State Interference in City Affairs.

ning of national independence; but state interference in city affairs was relatively infrequent until after 1850. It was tacitly assumed that although the legislature had power to intervene in local affairs if it so desired, nevertheless it ought not to do so "except when requested by the municipality."[1] But as the cities grew, both in population and importance, they came face to face with problems which were not altogether local in scope. One city, for example, desired to bring its water supply from outside the city limits; another wanted to empty its sewage into some waterway which it did not control. Various cities in the same region sometimes depended for their lighting upon the same gas company; yet no one municipality could effectively control the rates or service. It often happened, moreover, that policing, fire protection, and other civic functions failed to keep pace with the growth of the cities. Finally, the temptation to dip its fingers into the rich patronage provided by municipal offices, contracts, and franchises was more than some of the legislators could resist. The spoils seemed too valuable to be left wholly to the local authorities. The legislators desired a share for themselves. For good reasons and bad, therefore, the practice of legislative intervention was gradually extended.

Reasons for It.

Some Examples.

It is not easy to designate the exact date at which this practice of unsolicited legislative interference in city affairs began; but there were several instances of it before the Civil War. In 1857 the legislature of New York abolished municipal control of police in New York City and established a metropolitan police district (comprising New York, Brooklyn and adjacent municipalities) which it placed in charge of a state board.[2] Three years later the Maryland legislature took over the police of Baltimore, and state control over the police of both St. Louis and Chicago followed soon thereafter. The police department was the first to feel the brunt of state control for two reasons, to wit, because it was the most inefficient among all the city departments and because it provided the largest amount of political patronage.

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[1] A judge of one of the New York courts, in the course of a decision rendered in 1815, spoke of this as being "almost the invariable course of proceedings." Mayor, etc., of New York *vs.* Ordrenan, 12 John (New York), 122. Cited by H. L. McBain, *The Law and the Practice of Municipal Home Rule* (New York, 1916).

[2] A state park commission for New York City was also established in the same year.

The spoils system was now triumphant; the cities were strategic points in the struggle for patronage; hence to get them under control was a matter of great importance to the party leaders.

The Reaction Against It.

But the action of the states in withdrawing powers from the city did not make things much better. In some instances it made them worse. State control, furthermore, was a constant source of irritation to the citizen. The current of public opinion on this point rose so strongly that a reaction was produced and most of the state commissions were abolished. New York took this step in 1870. To afford protection against undue state interference in local affairs some other states adopted the plan of framing constitutional provisions against it. As a rule these provisions merely stipulated that there should be no legislative interference in matters of purely municipal concern; but two states—Missouri and California—provided that the cities should have the right to make their own charters. Thus began the municipal home rule movement which eventually gained a strong footing in more than a dozen of the states.[1]

Some Other Features of the Dark Ages.

The twenty years following the close of the Civil War may be said to have marked the lowest point in the morale of American city government. The nefarious activities of the Tweed Ring and other plundering groups gave the impression that the cities of the United States were the worst governed in the world. Still these cities kept growing by leaps and bounds; the value of real estate mounted so rapidly that fortunes were often made in a few months. The people were so busy in the promotion of their own private interests that public affairs got scant attention save from the professional politicians. Everywhere the problem of securing good service at reasonable cost was met in a makeshift and haphazard way. No state of the Union had any fixed policy as respects its cities; every problem was dealt with in opportunist fashion as it arose. The municipal reform movements of this period were directed against individual abuses; reformers did not venture to urge a complete and thorough overhauling of the municipal system. Honest men in the larger communities were on the verge of giving up in despair. It seemed as if city government in the United States were destined to remain the "conspicuous failure" that Mr. Bryce said it was.

Toward the close of the nineteenth century, however, there

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[1] See below, pp. 181-182.

The Emergence into Light.

were glimmers of light. The introduction of the civil service system in some of the larger municipalities began to have its effects. The plan of putting increased responsibility upon the mayor seemed to work to such advantage that nearly all the larger cities adopted it.[1] Vesting large powers in the hands of the mayor did not ensure efficient departmental administration, but it at least provided a focus of responsibility when things went wrong. Moreover, it secured a better organization of the departments and a certain amount of team play among them. Some of the most flagrant evils in city administration now disappeared.

4. The Last Quarter of a Century

The Municipal Renaissance.

The opening years of the twentieth century marked the beginning of a new and very important epoch in American city government. Beginning with the Galveston experiment of 1901 there has been a radical simplifying of municipal machinery all over the country. The commission form of government, which will be more fully described in a later chapter of this book, embodied both a protest and a policy. It was a protest against the doctrine of checks and balances in city government, a doctrine which succeeded in making the governmental machinery so complicated that few citizens could understand it. Until after 1900 it was heresy to question the sanctity of this ancient formula; as well might one try to argue about the validity of the Ten Commandments or the Golden Rule. But the spread of the commission plan shattered the public confidence in the principle of divided powers and several hundred cities sent it to the limbo of discarded theories. That, however, is not all. In many cities where new plans of government have not been adopted the echoes of protest have been heard and heeded. Everywhere, in fact, there has been a re-examination of fundamentals. The bicameral council has been abolished; and in those cities which retain the older type of municipal government the powers of the mayor have been greatly increased. The frame of city government has been simplified everywhere.

The Assault on "Checks and Balances."

Some Radical Reforms.

The Reorganization of the City's Business Methods.

There have been collateral improvements in the tools and methods of city business. The list of such betterments, if given in full, would be a long one. It includes changes in budget methods, in accounting procedure, and in the safeguards relating to the award of contracts. The introduction of real publicity into city affairs is largely the work of the past twenty-five years. Civil service reform has continued to make progress in the field of local government during this era; it has encountered difficult obstacles but it has thus far overcome most of them. The so-termed "efficiency movement" in business has also had its reactions upon public administration.

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[1] Boston, for example, in 1885, and Cleveland in 1891.

The Awakening of the Electorate.

But more far-reaching than any mechanical reconstruction has been the awakening of the average citizen's interest in the affairs of his own community. Reforms in charters and administrative methods are worth little unless they have an aggressive public sentiment behind them. The propulsive power must be supplied from below. It is now being supplied from that quarter to a much greater extent than it was a quarter of a century ago. The various ways in which the American civic conscience has been aroused are worth more than a passing word and they will be described in later chapters. At any rate it is a conservative statement that American cities have made more progress toward honest and efficient government during the past twenty-five years than they were able to make in the preceding fifty. A record of that sort gives no ground for pessimism.

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CHAPTER VI

THE CAUSES OF CITY GROWTH

The Process of Community Growth—An Analogy.

The city, in its process of growth, is sometimes likened to a human being. In the earlier stages of development its needs are few and simple, but as it passes into adolescence these desires multiply and at full maturity they become both numerous and widely diversified. The village requires very little in the way of political organization or of public services. A simple frame of government, with power and responsibility vested in the hands of a few elective officers is sufficient. The expenditures of the community are small. Its streets, as a rule, are neither paved, lighted, or cleaned; it possesses no public water supply and is provided with no elaborate scheme of sanitation, or of police and fire protection. It is but a very short way removed, in all these things, from the rural areas of which it really forms a part.

The Village.

The Village Becomes a Town.

But the village, in due course, becomes a town. With the trebling or quadrupling of its population the old order changes, giving place to the new. The people ask for better roadways, for public lighting, for an adequate water supply, and for the better protection of life, health, and property. To meet these demands the system of local government must be somewhat expanded, usually by the addition of administrative officials and boards. Taxes become heavier; the responsibilities placed upon all the public authorities are increased, and the people move forward, in their methods of life and habits of mind, to another stage in the process of differentiation between rural and urban.

The Town Becomes a City.

Then the third milestone is reached. The town attains sufficient size to warrant its admission to cityhood. In some communities, especially in Europe, this transformation from town into city has taken a long time—many generations. In America, a new and rapidly growing country, it has often been a matter of a few years only.[1] But whatever the length of time required, the town eventually becomes a city if it keeps on growing. Then its people obtain a city charter, establish a more intricate scheme of government, and through their local officers undertake to meet the more numerous and more highly diversified needs that have arrived with increased growth. Matters which could be left to the citizens themselves while the place was small are now socialized and become the tasks of the public authority. The town could get along with four or five municipal departments; the city may require a dozen or more. The town contented itself with supplying the more urgent public *needs;* the city must go further and cater to the public *convenience.* It must provide not only water and light but facilities for recreation and amusement. The regulating powers of the community also require more frequent exercise as the result of growth, and particularly because of the close contact in which the people live. The breadth of public functions is proportioned to the size of the municipality. The greater the city the more complex its life and problems. The maximum of complexity is reached in great metropolitan centers like London or New York. These places are more than cities; they are super-cities. No mind can comprehend a city of six or seven millions in its entirety. No one, though he spend many years at the task, can gain a full appreciation of its manifold aspirations, needs, and problems.

The Most Conspicuous Social Phenomenon of the Last Hundred Years.

The growth of cities, the world over, has been the most conspicuous social phenomenon of the past hundred years. The ancient world, as has been seen, was a world of cities and towns. We do not know what proportion of its entire population lived in cities; but it must have been large. The mediæval world, on the other hand, was one in which the cities played a relatively small part. It is probable that the cities of Europe did not contain more than two or three per cent of the total population in the year 1000. The modern world is once more becoming urbanized at a rapid rate. We have probably gone further in this direction than the highest point reached in any country during ancient times.

What has caused this cityward movement which has been going on at an accelerating pace for more than three hundred years and shows no signs of slackening?

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[1] In some states there is no intermediate stage between village and city. In Kansas, for instance, a community can become a city when it has 200 population.

The Growth of Cities Does Not Depend Upon the Size or Density of the National Population.

It is not enough to reply that countries as a whole have made great gains in population during the modern era and that the cities have had their share in this expansion. Cities keep growing in some countries where the national population has undergone no marked increase—in France for example. On the other hand a great and steady growth in the national population of China has not led to any notable urban expansion. China has four times the population of the United States and seven times the population of Germany, yet it has fewer great cities than either of these countries. A general increase in population is one of the things which helps to make city growth possible; but it is not the chief cause of it. There is no essential relation between density of national populations and the number of large cities. The occupations of the people have far more to do with city growth than their numbers. India, for example, is a densely populated land; its three hundred millions of people are massed into an area much smaller than that of the United States. But only about ten per cent of this population lives in the cities of India. Australia, on the other hand, is very sparsely settled. Its entire population is less than that of New York City, and it is spread over a continent which contains a greater area than the entire United States. Yet Australia has more than thirty cities, containing nearly fifty per cent of the entire population and two of which have over a half a million people. The reason is that the economic factors which operate to promote urban concentration in one country are absent in the other. What are these factors? Three stand out most prominently—the modernization of agriculture, the industrial revolution, and the development of commerce.

The Primary Causes of City Growth.

1. The Progress of Agriculture.

Among these primary factors the modernization of agriculture which has released a large part of mankind from its bondage to the soil is the most fundamental. Cities are made up of people who do not, for the most part, produce their own food supply. They depend for it upon others. So long, therefore, as the world's whole energy (or practically all of it) was concentrated upon the task of feeding itself there could be no drift of the population into cities. The existence of great cities assumes that the rural population, either of the home country or of some other, is producing a surplus food supply for their use. In ancient times the great fertility of the Nile and Euphrates valleys made a certain surplus possible and thus, to a limited extent, enabled cities to be maintained.[1] At Athens the citizens who lived within the walls owned farms in the valleys of Attica outside. The slaves who worked this land (and they far outnumbered the citizens) kept the city supplied with food. Ancient Rome assured the basis of her marvelous growth by taking, in the form of tribute, the surplus agricultural production of an enormous area. The modern metropolis purchases its food supply with the goods which its own people produce; but Rome manufactured very little that could be exchanged for food. Hence its very livelihood was on a precarious foundation, namely, that of military prestige and coercion.

Relation of Ancient Cities to Agriculture.

Relation of Agriculture to the Mediæval Towns.

In the Middle Ages there was almost no surplus food supply throughout the agricultural regions of western Europe. The task of raising from the land enough produce to supply the daily needs of the people engaged the labor of almost the whole population. What little could be spared went to maintain the lords and their military retinues. Very little was available to permit the growth of towns. The methods and implements of agriculture were so crude that an acre of land, even when a great deal of labor was applied to it, yielded an astonishingly meager harvest. Eight or nine bushels of wheat to the acre was a good yield in the fourteenth century; three hundred years later this had been generally raised to fifteen or sixteen bushels. Today it is nearly double that amount in some parts of Europe and America. To drag a single plough through the land required eight oxen, with two or three men to urge them along. Carts were few and cumbrous; the grain was mowed with a sickle and gathered up by the armful, hence the harvesting of a small crop required a large amount of drudgery. The cattle were scrubby and undersized; it is hard to realize that the average weight of beef cattle brought to the English market about the year 1700 was only about 370 pounds per head.[2] In the Middle Ages no artificial fodders were in use. Cattle which could not be subsisted through the winter on hay cut from the natural meadows had to be slaughtered in the autumn and the meat salted down. This salted meat was the mainstay of human diet during the mediæval winters everywhere. Potatoes were unknown until the seventeenth century. Root crops and vegetables were hardly cultivated at all.

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[1] Some drift to the cities took place in the very earliest days. Lot, we are told, "pitched towards Sodom," indicating that the lure of the city was not unknown even in his time.

[2] Sheep averaged 28 pounds, and lambs about 18. Good beef cattle now run from 800 to 1000 pounds; sheep 80 to 100, and lambs 50 to 60 pounds.

Modern Agriculture and City Growth.

Since 1700, however, the methods of agriculture have undergone a vast improvement. To describe them is hardly practicable here; and most readers have a general knowledge of them anyhow. The practice of rotating crops, the use of fertilizers, the introduction of new roots and artificial grasses, the improvement of seed, the scientific breeding of cattle, sheep, hogs, and poultry, and above all the use of machinery—these things have increased, many times over, the amount of food which can be wrung from the land by the labor of a single individual. It has been estimated that three men on a large American wheat farm, equipped with tractors and modern implements, can produce today by the use of scientific agricultural methods more wheat than could ordinarily be raised by the labor of ten thousand peasant workers a few centuries ago. Implements, in the rural district, have been replacing men. With this change the farms have grown larger, since fewer workers can cultivate a broader area. In Iowa the average size of the farms has increased 23 acres in the last thirty years. In 1890 there were six persons per farm; in 1920 only five persons per farm. One-sixth of the farm population has thus become superfluous in thirty years. The farmer of 1890, with one team of horses, could plough from two to three acres a day. In 1900 with a four-horse gang plough he could turn the sod on five acres. In 1920 with the aid of a tractor it was no feat for one man to plough as many as forty acres in a day.[1]

Some Examples.

The Release of the Population from the Soil.

This modernization of agriculture has released a large percentage of the people from the rural districts in all the more progessive lands. In the United States about thirty per cent of the people produce the entire basis of the nation's food supply and yet have a large surplus for export. The remaining seventy per cent are free to move into the towns and cities. The development of transportation and a more efficient system of credit have also reduced the amount of labor needed to produce the world's food supply. This they have done by equalizing the distribution to all countries within the commercial area. In olden times a local surplus was of no benefit except to the immediate locality. Today it is credited to the whole world's account. At any rate the city owes its growth, in the main, to the steady influx from the rural areas. The first and fundamental cause of urban development is the rural exodus. Nothing would have availed to draw people into the city had not things occurred to set them free from the land. The country's progress in agriculture, strange as it may appear, has resulted in the decrease of its own population.

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[1] E. M. Friedman, *America and the New Era* (New York, 1920), p. 159.

In yet another way the progress of husbandry has contributed to the growth of the cities, for although most of the food supply is produced in the rural areas it is worked up into marketable form in the cities. The flour mills, the meat packing establishments, the milk distributing depots, and so on, are located in the cities. So are the instrumentalities of transportation, marketing, and credit on which the agricultural producer must rely. It is quite within bounds to say that every day's labor on the farm or ranch furnishes more than a day's labor for someone in the city. The farmer furnishes the city with work as well as food. He has thus been a big factor in the upbuilding of the cities, even though he may not always be proud of his handiwork.

2. The Progress of Industry.

The second great cause of city growth during the past hundred years is to be found in the complete transformation of the industrial system. Until the closing decades of the eighteenth century all industries were organized on a small scale. Cloth was made on hand-looms in the homes of the people; shoes were the product of the cobbler at his bench. The work of making these and other industrial products was not carried on, moreover, by men and women who devoted their whole time to industry. Most of it was spare-time work, performed by people who devoted the larger part of their time to agriculture. There were spinning wheels and a hand-loom in almost every farmhouse. Surprisingly little, in the way of manufactured articles, had to be purchased by any agricultural community from outside its own bounds. The villages and countryside were virtually self-sufficing. This, whether they liked it or not, was rendered imperative by the condition of the roads which were so bad that

Centrifugal Effects of the Old Industrial System.

wheeled traffic was difficult and expensive. Even as late as 1700 the transportation of goods from town to town in the interior of England was chiefly by pack-horse. Macadamized roads were not constructed until much later.

The local sawmill and grist mill, both propelled by water wheels, were about the only industries which did not depend wholly upon muscular power. There was no labor class in the modern sense and no sharp division between master and workmen. The employer was himself a workman at the loom, the bench, or the forge. He might have as helpers a couple of apprentices who were learning the trade, and also a journeyman or two; but rarely were there more than a half dozen men or women employed in a single establishment. The whole tendency of hand-industry was centrifugal and decentralizing. It scattered industrial activity all over the land, among the villages and into the rural homes. There was nothing to be gained, under this system, by bringing a considerable body of workers together under one roof.

The Industrial Revolution.

But the advent of power-driven machinery brought into industry a profound change. The harnessing of steam was followed quickly by the invention of the spinning-jenny, the power loom, and other appliances which revolutionized the making of textiles.[1] Tasks which for ages had been performed by hand were promptly taken over by machinery. Domestic industry gave way in an amazingly short time to the factory system. Hand labor could not compete with steam. Goods could be produced by machinery at a small fraction of the former cost. No amount of skill or overtime work could enable the old methods of industry to survive.

The use of steam power is centripetal or centralizing in its influence. It brings the industry to where the power is. With the use of the new motive force, accordingly, the spinning and weaving industries left the homes of the farmers and the villagers, making their way into factories employing hundreds of workers. And in due course all the other industries traversed the same route. The pith of the matter can be expressed by saying that under the old system of hand industry the work went to where the worker was, but that under the factory system the work draws the worker to it.

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[1] The invention of the steam engine is commonly attributed to James Watt, whose work between 1763 and 1782 laid the foundation upon which the modern steam engine has been developed. But the possibility of deriving power from steam was known long before Watt's time, and crude engines were used for pumping water from the English coal mines as early as 1700. Watt's inventions were quickly followed by others of great importance—Cartwright's power-loom in 1785, for example.

Rise of the Factory Towns.

Now the logical place for the factory is the town or city, and it is there that most of the factories have been placed. The way in which they have contributed to the urban influx requires no lengthy explanation. Even the owners of small farms gave up their holdings and drifted into the towns. Small farms were consolidated and in some sections of England whole regions of country became almost depopulated. Goldsmith's *Deserted Village* is not a mere fantasy; many English hamlets were virtually obliterated by the industrial revolution. The young men and women of the rural districts, finding that there was no longer work enough for them to do at home, flocked to the factory centers where employment was plentiful. In the United States the domestic system of industry had gained no such hold as in England and for that reason the industrial revolution, when it crossed the Atlantic, had no such marked results in shifting the population. In this country the factory system made its first conspicuous headway during the period between 1820 and 1840; it was in this era that many of our industrial cities gained their initial momentum. From that date down to the present time the contribution of industry to city growth has been beyond measurement. The progress of industry has been marked by steady enlargement; the factories have grown bigger, and the greater the industrial establishment the more likely it is to have its location in a large community.

Why Modern Industries Go to the Cities.

Three important factors tend to concentrate the great industries in the cities, particularly in the large cities. The first is cheap and convenient transportation. Every industry is dependent upon the transportation facilities for getting its raw materials in and its finished products out. These facilities are almost always better in larger than in smaller communities. The large city, as a rule, is served by two or more railroad systems. In the great majority of cases it possesses the alternative of water transportation as well. Of old, when the various transportation systems were allowed to compete freely, to cut rates in order to obtain business, and to discriminate in favor of one

(*a*) Better Transportation Facilities.

city as against another, the existence of low freight rates was a powerful magnet in drawing industries to the favored centers. During more recent years, however, with discrimination virtually eliminated by the policy of governmental rate-fixing, the incentive to competition in freight charges has not been nearly so great. The development of motor-truck transportation, moreover, has somewhat lessened the disadvantages under which the outlying communities have been laboring. Industrial establishments have now become rather less dependent upon systems of rail and water transportation.

(*b*) A More Elastic Labor Supply.

The migration of industries to the larger cities has also been encouraged by the adequate supply of labor which can there be found at all seasons. This has been notably true of the industries that employ large bodies of unskilled or partly skilled labor, and of the so-called "seasonal" industries. When an industry is so conducted that it must expand or diminish its labor force at frequent intervals, the large city offers a favorable opportunity to do this. The small town is at a disadvantage here; when an industry shuts its gates, the workers move away; there is nothing else for them to do. In the large community the labor market is more flexible, for there is a wide variety of industrial opportunities in normal times and one industry takes up the slack that the others leave.

Some Labor Handicaps as Well.

There are, however, some counteracting disadvantages connected with the labor problem in large cities. Wages, as a rule, are higher in the large city than in the small town, because the cost of living is higher. The workers, moreover, are better organized in the larger centers of industry and are usually more rigorous in their demands. Not a few great industries, such as shoe and textile factories, are now moving out of the large centers in quest of lower wage levels and greater freedom from the pressure of labor organizations. It is not likely, however, that this movement will assume the proportions of a general industrial exodus.

(*c*) Proximity to a Large Market.

Industries desire to have, so far as practicable, a considerable market near at hand. The concern which locates in or near New York City can find six million potential customers within close radius; if it goes off into the rural regions it will find relatively few. In the case of many industries this proximity to a considerable market is an advantage not to be despised.

The problem of finding a ready and economical market for by-products is also one to which industries must give attention, and here the advantage is all on the side of the large community, particularly if many industrial establishments are concentrated in it.[1] The by-products of one industry are the raw materials of another; but unless they can be disposed of at close hand they are often not sellable at all—their relatively slight value will not bear the cost of transportation over considerable distances.

Summary.

Putting these various factors together—transportation facilities, an abundant labor supply, and proximity to a sizeable market—it can readily be seen that the drift of the industries to the large cities is a perfectly logical phenomenon, and one that is likely to continue. Twenty-five years ago it was suggested that the use of electric power might lead to the decentralization of industry once more—that even as steam had brought the industrial workers together, so electricity might cause them to disperse. That, however, has not come to pass. The rural waterfalls have been harnessed to generate electric power, but in the main it is power for the factories in the cities, rather than for small industries in the villages and rural districts.

The "Satellite" Cities.

One of the interesting developments of recent years, however, has been the growth of what are commonly called "satellite cities," industrial communities which grow up around some large industry in the outer fringe of great metropolitan areas.[2] Huge industrial plants in Europe and America have been uprooting themselves bodily from the downtown sections where land has become expensive and expansion impossible; and are setting themselves ten or a dozen miles outside in the open. The purpose is to secure the advantages of both a metropolitan and a rural location while reducing to a minimum the disadvantages which go with both. These satellite communities are usually made to order. Europe has its Letchworths, Port Sunlights, and other "garden" cities under various names; in the United States there are Norwoods and Ivorydales and Garys and Bessemers springing up almost overnight. The census figures indicate that all large cities are now growing more rapidly in their outer rings than in their older, congested sections.[1]

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[1] There is a marked tendency for birds of a feather in industry to flock together. New factories are apt to seek the neighborhood of older establishments in the same line of business. Then subsidiary trades grow up round about. A city in which there are many shoe factories draws a host of related shops, making thread, eyelets, shoe boxes, and even shoe polish.

[2] For an interesting discussion of this topic see Graham R. Taylor, *Satellite Cities* (New York, 1915).

3. The Progress of Commerce.

Commerce is the third primary cause of city growth. It is proper to lay stress upon the large part which the growth of industry has played in promoting the progress of urban concentration; but let us not forget that without commerce there could have been no industrial growth beyond the range of the local market. One reason why industry developed so slowly in earlier days can be found in the fact that cities could not or would not trade with one another. Having so restricted a market for their wares, large-scale production was out of the question. It was only when trade became national and even international in scope that the era of great industries began.[2]

How Trade Promotes Urban Growth.

Trade depends upon transportation, hence it invariably follows the routes of convenient transportation whether by water or by land. A large part of the world's commerce uses both land and water transportation and where the two systems come into contact there is what we commonly call a *break in transportation,* in other words a point where the form of transportation is changed. At tidewater the commerce leaves the freight train for the vessel, or *vice versa.* In lake and river commerce there are also points of transshipment. Hence we almost always find important commercial entrepôts not only abutting on good ocean harbors, but at the confluence of great rivers, at the head of lake navigation, at the termini of canals, and so on. Here congregate not only the handlers of transshipment, but importers and exporters, keepers of storehouses and wholesale men, —the great array of those who have to do with commerce at its strategic points. It is therefore easy to understand why so many of the large cities of the world are commercial centers, if not actual seaports. Nearly every *great* city owes its eminence to commerce, as even a cursory study of economic history will disclose. With the exception of the national capitals, past and present, nearly all the great cities of Europe are on navigable waters. Even in the United States, where the railways are popularly supposed to be the real city-makers, all but a very few of the thirty largest cities are located on the oceans, the Gulf, the Great Lakes or the great rivers.[1] One might expect that in a new country where so many of the cities have been located and built up since the advent of the railroad, facilities for navigation would not be of such great consequence.

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[1] See also, on this point, Vol. II, Chap. XL.

[2] For a discussion of the economic forces which have led to the development of great cities the reader may be referred to the article on "The Development of Metropolitan Economy," by Norman S. B. Gras, in the *American Historical Review*, Vol. XXVII, pp. 695 *ff.* (July, 1922).

The Secondary Causes of City Growth.

The foregoing are the primary factors in city growth but there are secondary causes as well. In America the cities have gained more than their share of the immigrants (for reasons which will be explained a little later) and this alien accretion has in some cases contributed handsomely to their expansion. Political considerations account in part for the growth of all governmental centers, and they have had something to do with the growth of certain American cities which are fortunate enough to be the headquarters of state government. But the fact that a city becomes a state capital does not of itself suffice to bring any great increase in size, as witness the examples of Sacramento, Harrisburg, Tallahassee, Salem, and some others. Social factors, likewise, have to be reckoned among the secondary causes of urban growth. The large city draws heavily upon the leisure class, upon those who, having accumulated a competence, desire to be where comfort and luxury prevail. It also draws from the other end of the economic scale, taking into its ranks the jobless, the outcasts, the flotsam and jetsam of society. The educational advantages, the amusements, and the whirling "life" of the city are a lure to many. Country life is isolated, and in a sense monotonous. It lacks that variety which is spice to the lives of men. Some of the reputed attractions of city life are new; others are as old as civilization itself. If man, as sociologists since the days of Aristotle have been remarking, is a distinctly gregarious animal, it is not surprising that he should display a partiality for that close contact with his fellows which the city provides. The city affords gratification for every type of ability, inclination, taste, whim, or caprice. Its call is strong, its allurements seductive. Its combined attractions are enough, at any rate, to sweep thousands from the rural areas into its vortex every year.

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[1] A. F. Weber, *The Growth of Cities in the Nineteenth Century* (New York, 1899), p. 173. Of the twenty largest cities in the United States (all of them with populations exceeding 250,000) seven have access to the Atlantic and two to the Pacific. Five are on the Great Lakes and six are on the Mississippi or the Ohio.

Will the Drift to the Cities Continue?

Is there no stopping this hegira? More than eighty per cent of the population of England is now massed in the cities; by 1950 that country will be denuded of all but city-dwellers if the rural exodus keeps on. In the United States the pendulum has already passed the dead center, yet the urge to the cities shows no sign of losing force. Prophets have appeared from time to time with the announcement that we are on the eve of a reaction, and that presently there will be a flocking back to the land. These prophets have not always been without honor in their own country; but they deserved to be, for events have always belied their utterings. There was a time when men predicted that if England ceased to be an agricultural country, England would starve. But England, under normal conditions, runs little risk of starving. The United States, it was said, would slacken its city-building boom if immigration fell off. But even during the World War, when immigration fell off and two million men went overseas, the cities kept forging ahead—some of them more rapidly than ever before. The cityward movement is the product of our economic and social organization; it will not be stemmed until this organization undergoes a radical change, and perhaps not even then. In Belgium, which is the most congested of all countries, cheap transportation has induced large bodies of urban workers to live in the country. But they remain city-dwellers to all intents, just as the Wall Street banker, who commutes to his home in Montclair, remains none the less a New Yorker in everything that counts. Country life can be improved, no doubt, and farming may become more profitable. This may retard the current somewhat, but there is no probability that it will succeed in turning it the other way.

How Big Can a City Grow?

One other question: Is there any limit to the size which a single city may attain? Most social aggregations, if they continue to expand, sometime or other reach a point where they disintegrate because of their sheer unwieldiness. Aristotle believed that the ideal city should not have more than 10,000 population. Today this figure is in some American states the minimum and not the maximum of cityhood. For many centuries after the fall of Rome the city of the Seven Hills was freely alluded to as an example of the dire fate which lay in store for any city which, like the frog in the fable, swelled itself to unseemly proportions. It seemed easy to prove, from the experience of Nineveh, Babylon, Carthage, and Rome that all leviathan cities were foredoomed to collapse. When London and Paris began to reckon their populations by the hundreds of thousands, as they did in the latter part of the eighteenth century, the pessimists once more began putting their pens to paper. Nearly two hundred and fifty years ago (1686) the renowned English statistician, Sir William Petty, calculated that for reasons which he set forth in detail, London's population could not possibly go above 5,000,000.[1] In the course of his figuring he demonstrated that a city of even less than 5,000,000 would require 600,000 houses and thus cover a circle with a radius of about thirty-five miles. (He did not make allowance for skyscrapers.) This radius, he believed, was the ultimate limit to which a single city could enlarge itself because it would be, as he demonstrated, impossible for a larger city to procure an adequate food supply. But both London and New York have gone above the 5,000,000 mark, and New York does not cover half the ground indicated. Nor is the task of securing a food supply, under normal conditions, any more difficult in either city today than it was in Petty's London of 1686. There is no reason, so far as one can now discern, why any city should stop growing so long as the causes which promote its growth continue to operate. So long as progress in agriculture, industry, and commerce continues without serious interruption the steady growth of cities seems inevitable. At its present rate of increase New York City in 1970 will be an urban giant of 15,000,000 or more.

But economic progress may not continue without serious interruption. A general breakdown of industry, commerce, transportation, and credit will do for the cities of any country exactly what such a breakdown has done for the cities of Russia during the past half dozen years. Petrograd in 1916 was a city of nearly a million; Moscow was well over the million mark; Odessa and Kiev had six hundred thousand each. Today no one knows what the respective populations of these great Slav communities may be; but that they have dwindled enormously is beyond all doubt. Great cities are extremely sensitive to any reversal in the normal progress of industrial and commercial life.

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[1] *Essays on Mankind and Political Arithmetic* (London, 1888), pp. 27-52.

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The best general discussions of the causes of city growth are those contained in A. F. Weber, *The Growth of Cities in the Nineteenth Century* (New York, 1899), especially ch. iii; P. M. S. Meuriot *Des agglomerations urbaines dans l'Europe contemporaine; essai sur les causes, les conditions, les consequences et leur dévelopment* (Paris, 1898); Jean Guillou, *L'émigration des campagnes vers les villes* (Paris, 1905); Emile Vandervelde, *L'exode rural* (Paris, 1910); E. E. Pratt, *The Industrial Causes of Congestion in New York City* (New York, 1911), and the *Report of the Country Life Commission* (Washington, 1909).

For a brief sketch see F. J. Goodnow and F. G. Bates, *Municipal Government* (New York, 1919), pp. 3-24.

CHAPTER VII

THE CONSEQUENCES OF CITY GROWTH

The migration of the people into the cities has had a profound effect upon the national life and character in every country where the movement has taken place upon a large scale. There was a time when men held the belief, based chiefly upon casual observation, that the general influence of urban growth upon the life and character of a nation could not be otherwise than harmful. The cities were looked upon by theologians, philosophers, and sociologists as so many centers of physical, mental, and moral degeneration. The wiseacres of forty or fifty years ago regarded the drift to the cities with frank pessimism and urged that action be taken to stem this tide lest the foundations of the national life be swept away. The shelves of our libraries contain many volumes, now no longer read, which excoriated the great city as a nursery of every human vice and clamored for such legislative action as would bring its wayward population back to the righteous austerity of the land.[1]

The Old Aversion to City Life.

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[1] Those who desire to peruse a typical example of these indictments may be referred to Max Nordau's *Degeneration*, published in Germany about 1885. An English translation appeared about ten years later. "The inhabitant of a town," wrote Nordau, "is continually exposed to unfavorable influences which diminish his vital powers. He breathes an atmosphere charged with organic detritus; he eats stale, contaminated, adulterated food; he fills himself in a state of constant nervous excitement, and one can without exaggeration compare him to the inhabitant of a marshy area. The children of large towns, if they are not carried off at an early age, suffer from that peculiar arrested development which Morel has observed in the population of malarial districts. With these mental changes, physical modifications go hand in hand." (p. 53.) In America such writers as Henry George (*Social Problems*, New York, 1883) and Edward Bellamy (*Looking Backward*, New York, 1889) pointed out that the city was not the natural habitat of man and that his life there could never be normal. Statisticians of repute adduced sundry facts and figures with which they sought to prove that urban concentration portended the inevitable decay of the race. It was a common saying that without the influx from the country the large city would not be able to perpetuate itself, so inherent was its lack of physical and moral virility. Charles Booth, in the researches which he made for his *Life and Labor of the People of London* (7

The Modern Attitude.

But a broader grasp of the principles which govern social evolution, and a more accurate knowledge of the facts, have tended to change the drift of opinion on this matter. Even the sociologists are not certain today that urbanization is a harmful tendency, and the statisticians are also in doubt, for it is impossible to determine by any process of statistical enquiry the exact influence which the transfer of the people from country to town exerts upon the life of a nation. In the absence of accurate data the continued movement from country to town naturally gives rise to some very interesting questions. Does the change tend to make the whole population more enterprising, optimistic, and radical in habits of mind? If so, to what extent? Does it tend to raise or to lower the national morale? Does it make democracy more difficult or more easy to preserve? What effect upon the social structure of the nation is this urban movement likely to produce? All of these are questions which no one can fully and confidently answer. We do not know, and cannot accurately measure *all the consequences* which follow a period of extensive urban concentration; on the other hand there are some social changes which do lend themselves to statistical discovery and analysis. There is no census data from which we can draw sound conclusions as to the effect of the cityward movement upon the patriotism, ideals, honesty, and moral stamina of the people. On the other hand it is possible to determine conclusively from the figures the extent to which urban concentration is affecting the birth rate, the death rate, the age distribution, the physique, and the income-earning power of the population.

The Real Consequences of City Growth Are Hard to Determine.

Some Features Which Lend Themselves to Accurate Determination.

This is easier today than it used to be, for the progress of statistical science during the past fifty years has been notable. The census authorities of all the more important countries have gathered figures relating to such matters as the numerical proportion of the sexes in city and country, the age distribution of the people in both areas, the birth and death rates, the average earning-power per individual, the physical measurements of urban and rural recruits, the relative prevalence of crime, pauperism, and illiteracy—and on various similar matters. They

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vols., London, 1902) found a widespread conviction that London families tended to die out after the second or third generation, but his data did not furnish any clear corroboration of this idea (iii, p. 65).

have analyzed and compared this data, and their conclusions are in most cases to be depended upon. This is particularly true where identical conclusions have been reached independently by the statistical authorities of all the important countries, as sometimes happens. Some of the consequences of city growth, as indicated by these census complications, are worth attention, the more so since they are at variance with the older notions.

The Social Consequences

The Distribution of the People by Sex.

The sociologist defines the city as "a large aggregation of people having a high degree of density and facility of intercommunication."[1] But cities are something more than mere aggregations of people drawn haphazard from the national population. In the course of their growth and by reason of their special environment, the cities have accumulated a personnel which departs from the national average so far as social characteristics of a measurable sort are concerned. Take, by way of illustrating this, the relative proportion of the sexes among urban and rural populations, for sex is the most fundamental of all differences among human beings. It is apparently the intent of nature that the sexes shall be approximately equal in the world as a whole, and under normal conditions of life. So far as we can judge from the incomplete figures available, the numbers of male and female children born into the world year by year are approximately the same, and if we had accurate statistics for the adult population of the globe they would probably show that males and females are about equally divided. There are times, of course, when this fairly equal proportion is disturbed, as, for example, after a great and decimating war which carries off many millions of men; but in the course of years the balance rights itself. In different individual countries, moreover, and even in different sections of the same country, a marked disparity frequently appears, and may continue over long periods of time. In most European countries, for example, the females outnumber the males; in the United States this relation is reversed.[2] And in America, the masculine predominance is more pronounced in the western than in the eastern portions of the country.

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[1] E. C. Hayes, *Introduction to the Study of Sociology* (New York, 1915), p. 60.

[2] According to the fourteenth census there were 2,090,242 more males than females in the national population, or about two per cent.

Its Significance.

Now the significant thing is that the cities, whether European or American, have almost invariably a higher ratio of females than is to be found in the rest of the country, and this excess is particularly marked in the industrial centers. Occasionally it amounts to as much as four or five per cent. The female predominance is due, of course, to the superior opportunities for the employment of women which the cities afford, and whether the disparity will in time become even greater depends upon the future development of industry. Will the industries of tomorrow create greater opportunities for female than for male employment? The answer to this question is of some importance because a very decided predominance of one sex over the other in any community is likely to render more difficult the maintenance of a normal social order.

Distribution by Age.

If one takes the population of any one community it will be found to contain, in varying proportions, persons of all ages from earliest infancy to advanced old age. In a community which is not affected by migrations in or out, the general age distribution can be represented by an approximate pyramid, the infants at the base and the very aged near the apex. If the rates of mortality were the same at all ages of life the pyramid would be perfect; but they are not the same. The rate is higher in the years of infancy than toward middle life, and among the aged it runs higher still. A community unaffected by either influx or exodus would be strongest in persons of immature age and weaker in each succeeding decennial age group.

Effect of Immigration and the Rural Influx Upon Age Distribution in Cities.

But the cities, being affected by the influx from outside, are strongest in the middle age groups. Their populations are greatly augmented by the incoming of persons who have been born abroad or in the rural districts but who move to the towns when they reach the working age. The city's age pyramid bulges, therefore, at the points represented by the 18-48 age-periods, which means that the cities are particularly strong in persons who are at the most energetic and productive periods of life.[1] For that reason the earning power per capita of the city ought to be higher than the corresponding figure in the rural districts.

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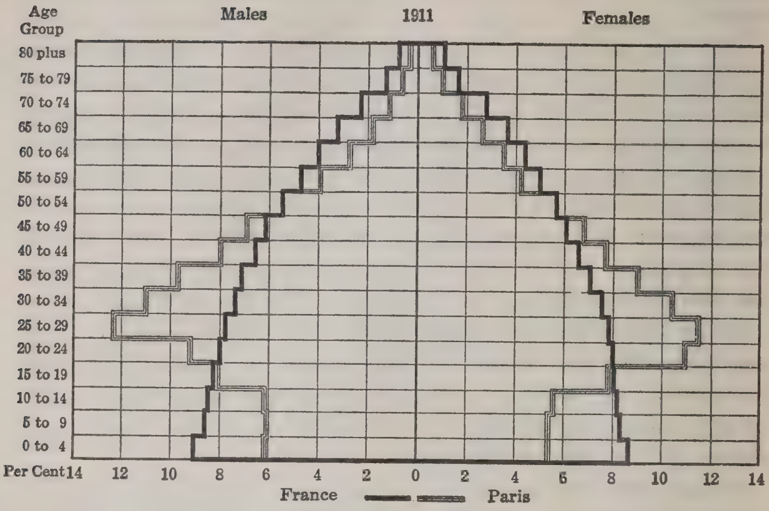
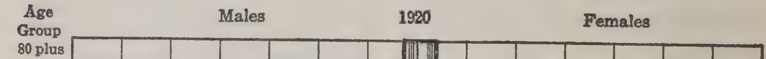
[1] This interesting social phenomenon will be made more intelligible, perhaps, by the charts on page 128 which show the contrast in age dis-


Age Group
Males
1911
Females
80 plus
75 to 79
70 to 74
65 to 69
60 to 64
55 to 59
50 to 54
45 to 49
40 to 44
35 to 39
30 to 34
25 to 29
20 to 24
15 to 19
10 to 14
5 to 9
0 to 4
Per Cent 14
12
10
8
6
4
2
0
2
4
6
8
10
12
14
France
Paris



Nor is it a question of physical vigor alone. The city makes its appeal to the capable, the eager and the ambitious of both sexes. It is the goal of those who seek greater economic opportunities than those which the rural districts afford.

Distribution by Nativity: the Alien Element.

The most conspicuous social difference between urban and rural populations, particularly in the United States, is the enormously greater racial diversity which is found in the cities. According to the census of 1920 the percentage of the foreign-born in the total population of the United States was a little over thirteen per cent. This percentage has not shown any increase during the past twenty years; on the contrary it has undergone a slight decline.[1] The native-born are gaining, and with the strict limitation which is now imposed upon the number of aliens admitted to the United States there would be no insuperable problem of social assimilation if those already here were equally distributed over the entire country. But such is not the case. The foreign-born population of the United States is massed for the most part in the cities, particularly in the large cities. The figures of 1920 show that in the cities of over 25,000 the foreign-born constituted more than twenty-five per cent of the population; and in cities of over 100,000 the rate was nearly thirty-five per cent. In some parts of the country the difference in racial homogeneity between city and rural district is very marked. Take New York State, for example. In the rural areas of this state, the native-born whites made up 87.8 per cent of the total population in 1920; in the cities, only 67.6 per cent. The task of Americanizing the alien is thus falling disproportionately upon the cities.

Why Do Immigrants Concentrate in Cities?

Why do immigrants tend to concentrate in the cities? Offhand, one might say that it is because most of them land in the cities when they leave ship, and that following the line of least resistance they settle down in the ports to which they come. But this does not explain the presence of great numbers of foreign-born in such cities as Pittsburgh, Cincinnati, and St. Louis. The real reason is that the immigrant comes to the United States to find work and naturally goes to where work is most

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tribution between the population of France and of Paris on the one hand, and that of the United States and New York City, on the other. In the former case the figures are taken for a year antedating the War. I am indebted for these charts to Mr. W. A. I. Anglin.

[1] In 1900 it was about 14 per cent; in 1910, about 15 per cent.

readily to be found. Most of these newcomers have learned no trade before coming to America; and few bring any capital with them. They must therefore seek those employments which do not require skill or capital. Many have been agricultural workers in their native countries; but even these do not, as a rule, adapt themselves readily to the processes of farming under the widely different conditions of agricultural America.[1] The large cities, on the other hand, offer abundant opportunities to unskilled labor; they absorb great quantities of it every year. The cities also possess many employments at which a novice can learn his job in a relatively short time—the ready-made clothing, cigar making, and certain branches of the iron and steel industries, for example. When industrial conditions are normal it does not take the newcomer long to find some place in the great productive mechanism of the American city.

(*a*) Economic Reasons.

(*b*) Social Reasons.

Another reason for the drift of the alien to the city is his desire to be near others of his own race. Men and women of all races are clannish by nature; they want to be where they can find others of their own kin; they like the stimulus of those with whom they can associate and converse. In every large industrial community, therefore, one can usually find foreign colonies—Italian, Polish, Jewish, and so on. To the new arrival these racial oases are like home. And by the time he acquires a hold upon the language and the customs of his adopted country, the alien has become wedded to the urban environment and thereafter is not likely to depart from it.

Some Effects of Alien Colonization in American Cities.

The massing of great foreign-born elements in the American city has had far-reaching social, as well as economic and political consequences. It has brought into the urban centers a variety of traits and qualities, giving to the American city a cosmopolitanism which even the large European communities do not possess. It is sometimes said that the immigrant population is responsible for more than its due proportion of crime; but no convincing evidence has yet been produced in support of this assertion. It is a fact, however, that poverty and illiteracy are more common among the foreign-born than in the ranks of the native white population, and it is probably true, although it cannot be fully established, that the immigrant tide has tended to lower somewhat the physical average of the city populations. It is also beyond question that the heterogeneity of the American city's population has rendered more difficult the problem of maintaining proper health standards, and of enforcing some of the laws.

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[1] There are exceptions, of course. The Scandinavian immigrants, for example, have gone largely into agriculture and have helped greatly to build up certain areas of the Northwest, notably Minnesota. The Italian immigrants in recent years have been finding employment to a considerable extent in market gardening and truck farming. Many immigrants, especially from the northern regions of Europe, have gone into the mining and lumbering areas of the United States.

Effects Upon the Expansion of Industry.

In the realm of industry the effects stand out even more conspicuously. The influx of aliens has kept the city's labor market well supplied and at times over-supplied. It is a striking fact that the immigrants who come to the cities are for the most part persons who have reached the age at which they can earn their own living. Among a thousand foreign-born white persons there will be a distinctly larger proportion of wage-earners than among a thousand native-born whites. The great industrial expansion which has built up the cities of the United States during the past fifty years could not have taken place without these accessions of man-power from Europe. On the other hand, the steady influx of immigrants down to 1914 undoubtedly tended to keep the general level of wages down, and labor leaders claim that it prevented the rise in the American workman's standard of living which otherwise would have taken place. For that reason organized labor has strongly urged the placing of even more drastic restrictions upon immigration. If the immigrants could be scattered evenly over the face of the country the danger of glutting the labor supply in any one place would be small; but there seems to be no practicable way of securing this dispersion.

Relative Birth Rates in City and Country.

In all countries it appears to be true that the birth rate in cities is larger than that of the rural districts, and that it is higher in large cities than in small ones. It has been asserted, indeed, that the birth rate varies directly with density of population, and there is much corroboration of this rule, although it does not apply everywhere and at all times.[1] In some measure the high birth rate of the city may be attributed to the concentration there of alien elements, among whom the birth rate is traditionally high, but the entire discrepancy cannot be explained in this way. In Europe, for example, the higher birth rate of the cities can hardly be traced to any racial differences in the population, for there are almost no such differences.[1] A more convincing explanation points to the city's strength in the middle age-groups, in persons of child-rearing age, as indicated a few paragraphs earlier. Birth rates, moreover, are influenced by economic factors, particularly by the occupations of the people. The rate is usually high among manual workers. It is lower among those sections of the population which stand toward the top of the economic scale. Indeed it is a rough but fairly safe generalization that the birth rate diminishes as one goes from the poorer to the better sections of the city; it is highest in the slums and lowest in the select residential districts. For this reason some sociologists comfort themselves with the conclusion that a diminishing birth rate is the portent of an advancing civilization. The declining rate, they say, is evidence that the workers are attaining higher standards of living.

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[1] In America the rate is higher in the cities than in the country. In New York State, for example, the birth rate was 22.5 for every thousand persons in 1920; in New York City it was 23.5. But in Buffalo it was 26.0 per thousand, in Utica 25.6 and Binghamton 24.7, although these are all much less dense in population than New York City.

Relative Death Rates.

But although the cities have a birth rate higher than the rural districts they do not make a correspondingly greater contribution to the net increase of the country's population. This is because the city loses, through its higher death rate, most of what it gains through an excess of births. The higher death rate of the city is a social phenomenon that discloses itself in all countries which keep accurate statistical records, and it seems to have been true from the beginnings of time. The death rate of ancient Rome was very high, how much higher than that of the provinces we do not know. Throughout the Middle Ages and even down to the close of the seventeenth century we know that in the cities the deaths considerably exceeded the births; the contrary must have been true in the rural districts, otherwise Europe could not have increased her total population at all.[2]

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[1] The birth rate of London (according to figures for 1920) was 26.5 per thousand; that of Amsterdam 23.2, and that of Paris 19.6. The figures for Berlin and Vienna, 17.1 and 16.4 respectively, were abnormally low for a time after the war.

[2] "In the years of King Charles II's death and King James II's coronation (which were neither of them remarkable for extraordinary sickliness or healthfulness) the burials did wonderfully agree, viz. A.D. 1684 there were 23,202, and A.D. 1685, there were 23,222, the medium whereof is 23,212. And the christenings did very wonderfully agree also, having been

No part of the slow growth which marked the population of the mediæval city came from within; it was entirely due to migration from the country. It was not until the early years of the nineteenth century that urban death rates in European countries declined to a point where cities could grow without depending entirely upon an influx from outside.

Reasons for the High Urban Death Rate.

The higher death rate of the cities persists even today, although the gap between city and country in this respect is being steadily reduced. Insofar as the city's rate remains higher than that of the rural area it is due, in the main, to two causes. First is the high infant mortality, especially in the crowded section of the larger communities. In New York City 85 out of every 1000 children born in 1920 died within a year; in Boston 102, in Pittsburgh 110. This means that substantially ten per cent of the natural accession to the city's population is lost within a year.[1] In the rural districts the percentage is rarely half as much. The other feature is the high accidental death rate among adults in cities. Most hazardous occupations are city employments. In a large city the street accidents alone are becoming an item in the death rate.[2] Mention should also be made of the nerve-racking strain of city life and the high tension under which city dwellers perform their daily tasks. It is also asserted, and it is no doubt true, that irregular habits and excesses of every type are more characteristic of urban than of rural inhabitants.

How Death Rates Are Being Reduced.

But the urban death rate is everywhere coming down. In 1890, for example, the death rate of Boston was 34 per thousand, which represented a gain of only eight persons per thousand in the course of a whole century. During the thirty years between

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A.D. 1684, 14,702, and A.D. 1685, 14,732, the medium whereof is 14,716." Sir William Petty, *Essays on Mankind and Political Arithmetic* (Cassell's edition, New York, 1888), p. 102. According to these figures London was losing, through the excess of deaths over births, about 9000 per year.

[1] Compared with cities in other countries this is not a very bad showing. In London the figure for 1920 was 75 per 1000; in Paris 98, in Berlin 105, in Vienna (as indicative of the misery and want) it was 161. Among other European cities Stockholm and Christiania made the best showing, with 41 and 55 infant deaths per 1000 births in 1920. In the United States the figures for Seattle and San Francisco, 51 and 57 respectively, are the best.

[2] In New York City during 1920 there were nearly 900 deaths from street accidents, or about 15.6 for every 100,000 people. The total death rate from all causes was 1293 per 100,000 population.

1890 and 1920, however, it fell to less than 15 per thousand, which means that the city made more progress in mortality reduction in the last three decades than it was able to make in the preceding ten.[1] The chief reason for this remarkable decline is to be found in the rapid progress made by the science of preventive medicine, which has brought with it a great improvement in public sanitation, in personal hygiene, and in the control of epidemics.[2]

Infant Mortality in Cities Is Still High.

But most notable of all has been the reduction of infant mortality. In the crowded sections of large cities the number of infant deaths, especially during the summer months, was frightfully high a generation ago. Poor quarters, poverty, tainted milk, and the lack of knowledge concerning the proper care of infants were largely responsible. By better housing regulations, by the strict supervision of the milk supply, and by campaigns of education in baby hygiene the death rate among small children has been steadily brought down, although it is still a good deal higher than it ought to be. The infant death rate is a good barometer of a city's civilization.

Physical Development in City and Country.

What are the consequences of city growth upon the physique of the people? Ever since the days of ancient Rome there has been a widespread belief that the country districts produce most of the strong, robust men, while the cities raise a brood of weaklings.[3] This notion was so persistent that well down in the nineteenth century it played a prominent part in the controversy over the repeal of the Corn Laws in England. Those who supported the policy of protecting the English farmer against the competition of imported grain laid emphasis upon the need of maintaining a "sturdy yeomanry" as the backbone of the national defense. It was tacitly assumed that if England ever became a nation of towns, the race would become dwarfed, stunted, degenerate, and unable to grapple in arms with the stalwart sons of men from agricultural countries.[4] It was plausible to argue

The Older Notion That City Life Promoted Physical Degeneracy.

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[1] In New York State the death rate per thousand in 1890 was 21.4; in 1920 it was 13.8.

[2] See Vol. II, Chap. XXXV.

[3] "Fortissimi viri et milites strenuissimi ex agricolis gignuntur." Cato, *De Rustica*, Ch. i.

[4] The idea was poetically embodied in Goldsmith's oft-quoted couplet:

"Ill fares the land, to hastening ills a prey,
Where wealth accumulates, and men decay."

Goldsmith was not alone. Other poets and philosophers during the that city life, with its specialization of labor, could not be otherwise than debilitating. Shut up in a factory all day long, performing some single routine task such as setting bobbins upon the spindles of a cotton mill,—how could the average city worker hope to develop his muscles and sinew? Compare his life with that of the rural worker whose variety of tasks, all of them performed in the open air, assured a well-rounded physical upbuilding! By this line of *à priori* reasoning nothing was easier to establish than the physical superiority of the rustic. And to clinch the matter, there was the fact that such statistics as were available a half century ago seemed to demonstrate the inferiority of the urban population in stature at least.[1]

Reasons for Doubting Its Accuracy.

But there were some skeptics who persisted in pointing out that these notions found no support either in the opinions of military leaders or in the data afforded by the European system of compulsory military training. During the American Civil War, for example, it was often remarked that regiments recruited from the cities bore the physical strain of forced marching quite as well as those which came from the agricultural regions, and sometimes even better. Moltke, after the Franco-Prussian War of 1870-1871, gave similar testimony.

What the Statistics Prove.

Even more convincing was the evidence gathered in connection with the annual levy of recruits for the German, French, and Italian armies. In each of these countries, during the last half of the nineteenth century, large numbers of young men were annually called to the colors for military training. They were measured, weighed, examined, and classified with great care. Among every thousand young men called for service there was always a certain percentage (it varied from twenty to fifty per cent) of unfitness by reason of bodily defects, but this ratio of rejections was usually higher among rural than among urban recruits. The percentage of those who were annually found to be disqualified for full military service by reason of deficient height, or weight, or chest measure, or by reason of poor eyesight, defective hearing, flat feet, varicose veins, heart or lung trouble, and all the rest—this percentage was usually

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eighteenth and nineteenth centuries bitterly lamented the exodus from country to town.

[1] These statistics are summarized in Professor W. Z. Ripley's article on "Urban Problems" printed in the *Popular Science Monthly*, March, 1898.

found to be higher among recruits who came from the country than among those who hailed from the towns and cities. These figures led an authoritative French writer to conclude that fitness for army service depended less on density of population than on general habits of life.[1] In the closing decades of the nineteenth century, therefore, opinion on the subject began to reverse itself, and sociologists were ultimately led to suspect that the massing of population into the cities would in no wise impair the physical strength of the race but on the contrary might even improve it.

American Data Based Upon Experience With the Selective Service System.

Until the years 1917-1918 we had, in the United States, no satisfactory data from which to draw conclusions on the matter. Prisoners in jails, students in educational institutions, together with the modest number of men who formed the military and naval forces of the nation were measured, it is true, and these measurements were carefully tabulated; but generalizations concerning the physique of a hundred million people could not safely be based upon data which covered at best a few hundred thousand. Neither could we be sure that these few hundred thousand were typical of the whole. Under the provisions of the Selective Service Act, however, more than six million young Americans, drawn from every section of the country and from every element of the male citizenship, were called before the local draft boards and given a rigid physical examination during the seventeen months intervening between June, 1917, and November, 1918. The proportion of those rejected as unfit for full military service proved to be unexpectedly high. It averaged about twenty-five per cent. But the records disclose a larger percentage of rejections in the urban than in the rural areas, and the Provost Marshal General expressed the opinion that "a considerable physical advantage accrues to the boy raised in the country."[2]

Is General Crowder's Conclusion Justified?

This opinion of the Provost Marshal General may be justified, but is not a necessary conclusion from the figures embodied in his report. The figures, unfortunately, do not furnish sufficient information for sound deductions concerning the physical conditions of the people in any section of the country.[1] This is because they do not take any account of the large number of men (most of them from the cities) who entered the service without being drafted or who were federalized with units of the national guard. So we are still left in the dark as to the evidence of the war in relation to urban and rural physique.

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[1] *Dictionnaire encyclopédique des sciences médicales* (3d series, 1874), Art. "Recrutement."

[2] *Second Report of the Provost Marshal General on the Operations of the Selective Service System* (Washington, 1919), p. 159. See also A. G. Love and C. B. Davenport, *Defects Found in Drafted Men* (Washington, 1920), the figures in which do not wholly agree with those in the report of the Provost Marshal General.

The Intellectual Prowess of the City and Country.

But whatever the *physical* consequences of urban concentration, its effect upon *mental* development is reasonably clear. There is every reason to expect a greater promotion of intellectual progress from the cities than from the rural areas. In the cities the requirements as to compulsory school attendance are more rigidly enforced; the schools are better in equipment and methods; and in the larger cities there are continuation schools, evening schools, and specialized schools of various types which one does not find in sparsely populated districts. In the urban schools of the country the average attendance is better, and there are more school days per year. In facilities for higher and professional education, moreover, (junior colleges, colleges, universities, technical schools, and professional schools, not to speak of business and commercial colleges), the cities have a great advantage. Nor should we overlook the city's facilities for general education in the way of public libraries, public lectures, daily newspapers, and many other things not directly connected with the schools. At any rate it is generally agreed that the general level of education is higher in the cities than in the country districts, although there is no certain way of demonstrating that this is so. We have no statistical data on which to base conclusions as to the "general level" of education.[2]

The Figures of Illiteracy.

On one point, however, it is possible to speak with assurance, for the census bureau provides statistics as to the amount of illiteracy in city and country. According to the figures of 1920 the total number of illiterate persons (ten years of age and over) in the United States was slightly less than five million, or five per cent of the whole population.[1] This figure includes, however, the large quota of illiterates among the negro population of the Southern states. Taking the white population (native and foreign born) of the country as a whole, the illiterates form only three per cent. In the cities, including the larger cities, the percentage is sometimes lower still, notwithstanding the presence of large foreign-born elements. In other cases it is higher than the national average.[2] Among native-born white persons over ten years of age the percentage of illiteracy in the large cities is almost nil.[3] The incentives to literacy in the city are far greater than in the rural districts; for there are very few urban employments which anyone can obtain and hold without being able to read and write.[4]

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[1] The reasons for this conclusion may be found in Rufus S. Tucker's article on the "Distribution of Men Physically Unfit for Military Service" in the *Quarterly Publication of the American Statistical Association*, September, 1922, pp. 377-384.

[2] Intelligence tests, so-called, were applied during 1918 to about a million officers and soldiers in the American military forces, but the results of these tests have not been classified on a basis of rural *vs.* urban intelligence.

Their Significance.

A smaller proportion of illiterates does not necessarily indicate, of course, that the general level of intelligence or education must be higher in urban than in rural communities; but there are many other reasons for suspecting that it is so. Even casual observation points to the average townsman as more alert, more versatile, quicker in his mental processes, and more resourceful than his compatriot on the farm. This is not merely because he has had a better school education but because life in a city is a continual process of education. The intelligence of the man who lives in the city is continually subject to spur and stimulus by reason of the complex environment in which he lives. The *work* of the townsman, as a well-known economic writer has pointed out, may be less educative; but his *environment* is much more so.[1] Certain it is, at any rate, that nearly the whole advance in human knowledge is dependent upon those who live in the cities. It is significant, however, that much of it has been accomplished by men who have emigrated in youth from the country.

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[1] In Europe the percentage of illiterates varies greatly from one country to another. In France it is about 14 per cent; in Greece 57 per cent; in Italy about 37 per cent; in Portugal 68 per cent; and in Serbia, 78 per cent.

[2] In New York State the percentage of illiterates in 1920 was 5.1 per cent; in New York City it was 6.2 per cent.

[3] In New York City it is .03 per cent; in Chicago .02 per cent; in Philadelphia .03 per cent; in Seattle .01 per cent.

[4] The results of our experience during the World War, indicated that the census percentages of illiteracy are probably too low. The census enumerators do not require anyone to demonstrate ability to read and write; they take one's word for it. The army applied an actual test, namely that each recruit should read from an ordinary newspaper and write a short letter. On this basis about fifteen per cent of the drafted men at many of the camps proved illiterate. As these were all men between 18 and 32 years of age, and included a relatively small proportion of the non-naturalized foreign born, it is probable that the amount of actual illiteracy in the country is at least three times as great as that implied by the census returns.

Relative Morality of City and Country.

It is commonly asserted that the growth of cities has conduced to the lowering of the national morality. Many sermons have been preached and many editorials written on this theme. The statistics of crime, moreover, lend color to the indictment. In all countries the number of crimes reported as having been committed in the cities seems very large when compared with the number attributed to the rural districts. In the United States the city contributes at least three times its proportionate quota to the crime records; in the larger cities the ratio is even greater. This state of affairs, however, can be partly or perhaps wholly explained without resorting to the hypothesis that city life is conducive to a lowering of moral standards.

The City's Criminal Class.

It is obvious, for instance, that the city offers far greater opportunities for the commission of crimes, especially such crimes as burglary, larceny, embezzlement, and fraud. It is said that about one hundred thousand automobiles are stolen every year in the United States. What percentage of these thefts do the rural districts contribute? It must be very small. Bear in mind also that the facilities for escaping detection are greater in the cities. Despite the highly-organized police establishments of the larger communities, it is easier for the malefactor to hide himself in the slums than on the prairies. That is one reason why crooks, forgers, pickpockets, yeggmen, gunmen, and bootleggers almost invariably make their permanent headquarters in the congested parts of the city. They are also influenced, no doubt, by the fact that the urban environment provides better facilities for disposing their ill-gotten gains, as well as for the dissipation which usually follows. The city, moreover, suffers more heavily than the country from the vicissitudes of industry and trade. In the agricultural regions there is usually work enough for those who are willing to do it. But in the cities there is always an idle element, larger when work is scarce and smaller in time of industrial prosperity. It is a true saying that the devil usually manages to find work for those whose heads and hands are out of employment, hence it is not surprising that "crime waves" come in the wake of business depressions.

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[1] J. A. Hobson, *The Evolution of Modern Capitalism*, pp. 338-339.

For these various reasons it is not fair to conclude that the city's moral standards are low because its criminal ratio is high. Criminality among urban populations is localized; it is largely confined to a class apart—a class which has little or no part in the life of the city as a whole. The fact that more crimes are committed in cities than in the rural districts does not necessarily mean that there are more criminals, for the same hardened sinner may commit many crimes. The city is prolific in habitual offenders; and it is they who swell the crime records.

One Explanation of the Increasing Crime Ratio.

Many timid people have been greatly disturbed to find that the number of crimes committed in the United States each year is increasing at a more rapid rate than the growth of the national population. They point to this as a sign of diminishing respect for law and order, and of a declining national morality. But such a conclusion does not surely follow from the facts. The amount of crime depends as much upon the distribution as on the size of the population. A rural population, drawn wholly from a racial stock which has law-abiding traditions, particularly if it be settled in a fertile land, is altogether likely to make a good showing in point of law observance. That was the situation of the United States a hundred years ago. But as the race diversifies, as the big cities grow, and whirlpools of industry are created, as unemployment becomes common and the idle element enlarges—then the number of crimes is sure to undergo an increase. That is the situation in the United States today. It would be a miracle if this great transformation in the national life were not accompanied by an increase of lawlessness, for it is one of the social consequences of city growth that it increases the temptations and opportunities of the wrongdoer. This is not to imply, of course, that the shifting of the population from country to city is the sole cause of the increased crime ratio which has afforded students of criminology their basis for misgivings in the last few decades. There are other factors which will be dealt with in their proper place.[1]

Some Offsetting Virtues.

Over against all this one ought to set the city's greatly superior showing in the fields of philanthropy, social service, and humanitarianism. Nearly all great movements for the amelioration of suffering, of injustice, and of ignorance have their origin in the cities. The people of the cities supply the initiative, the guidance, and most of the funds. There are probably more social workers in New York City than in all the rural regions of the country put together. In the cities the men and women who give their time and money to promote the welfare of the poor and the afflicted are numbered by the thousand, but their acts of righteousness find no place in the statistical records. We keep count of the city's crimes, but not of its heroisms and generosities.

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[1] See Vol. II, Chap. XXXIII.

Economic Consequences

Effect of Urbanization on the Ownership of Property.

The growth of cities has brought economic consequences of a far-reaching character. In divorcing men from the soil, it has greatly diminished the number of home-owners and correspondingly increased the number of those who are mere tenants of houses or apartments. According to the census of 1920 more than sixty per cent of the "farm families" of the United States live in homes of which they are the owners.[1] In the cities this percentage is very much smaller. The same census indicated that exclusive of "farm families" only thirty-five per cent or thereabouts of all the families in the country own their homes. In the larger cities the proportion is much smaller still and decade after decade it keeps diminishing. In Boston it is now less than fifteen per cent; and in New York City only about ten per cent.

Its Effect Upon the Family as an Organization.

This marked disparity between home-owning in city and country is of great economic significance; it means that the population of the city is less tied down, more easily shifted from place to place, and less deeply imbued with the home spirit. A good deal of honest sentiment clusters around the home; but not much can ever attach to a rented flat in a tenement house. The congestion which is a feature of city life, indeed, makes for the breakdown of the family as an institution. Home ties are weakened, for members of the family, as soon as they gain employment, become self-dependent and do not depend upon the home. Many thousands are to all intents "homeless," living in hotels or in boarding or lodging houses. The tendency to live up to the last dollar and to put nothing away for times of adversity is characteristic of the homeless worker. The great mass of the city's population is propertyless; it is therefore affected, promptly and severely, by changes in general economic conditions.

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[1] The total number of dwellings in the entire country was 20,697,204, so that the national population averaged 5.1 persons to a dwelling. In the agricultural states the average was somewhat smaller (Iowa, 4.3, Kansas 4.3, Indiana 4.2, Oregon 4.2, etc.); in the industrial states it tended to run higher (Rhode Island 6.1, Massachusetts 6.5, New York 7.8, Connecticut 6.0).

The City's Share of the National Wealth.

The cities have been responsible for a large part of the world's accumulated wealth, but this accumulation does not represent the thrift of the industrial worker. Increases in capital come chiefly from the savings of those who have large or fairly large incomes. It is because of the cities, therefore, that we have so unequal a distribution of the national wealth. No such unevenness of distribution as that which one sees in the metropolis can be found in the rural regions anywhere. The total wealth of the United States is estimated to exceed three hundred billions, or about $3000 per capita of population.[1] In this enormous total the cities (although they have only half the population) have acquired a three-quarter share. This massing of so large a share of the nation's wealth in the cities has given them an enormous advantage in all that concerns economic activity. It has been the subject of constant complaint on the part of the rural population, which seems to feel that this urban control of money, banking, and credit is responsible for most of the worries which come to the farmer, the planter, and the ranchman from time to time. The demand for "cheaper money," and for a better system of agricultural credits, is a sign of rural irritation at the enormous financial power of the cities.

The City's Per Capita Income-Earning Power.

The annual earnings of the American people now amount to about seventy billion dollars per year.[2] Of this the cities earn considerably more than half. The average income-earning power per capita is higher in the city than in the rural districts and this is necessarily so in the ranks of the smaller income-earners, for the cost of living in urban communities is much greater. Having in its population more persons of productive age, the city ought to be a place of greater production per capita, and if its population be of higher intelligence or education, this also helps to account for its greater earning power. In any case the city possesses most of the nation's skill and genius; it is there that one must go to find the greatest financiers, lawyers, physicians, engineers, artists, and captains of industry—the men whose annual incomes run into five figures and help to send the average upward.

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[1] The estimated wealth of other great countries is approximately as follows: United Kingdom, 120 billions, France 93 billions, Germany 85 billions, Italy 35 billions, Japan 25 billions.

[2] For reasons which are set forth in *Income in the United States,* by Wesley C. Mitchell and others (New York, 1921), no exact figure can be given.

The Gulf Between Economic Classes in Cities.

The most striking economic consequence of city growth—an accompaniment rather than a consequence it may better be called—is the formal and compact organization of labor which it has made possible. There is no such class unity in the agricultural regions, for it is difficult to weld widely-scattered workers together. Many attempts have been made to organize the farmers of the country; but without lasting success save in the case of some co-operative marketing associations. Class consciousness requires a certain amount of contiguity. The industrial revolution, by bringing the workers together, gave rise to labor problems, labor organizations, and the labor movement. And it is in the cities that this revolution has run its course. Land and labor can be yoked more harmoniously than capital and labor. The chasm which separates the industrial classes in the great cities is wide and it does not seem to be appreciably narrowing.

The Strange Heterogeneity of the Large City.

The city is a place of marvellous extremes and contrasts. It contains the highest peaks of wealth and the lowest depths of poverty, with every conceivable stage between. Cheek by jowl stand its exclusive residential sections and its most sodden slums. Men and women of the highest culture live but a stone's throw from the haunts of unmitigated ignorance. The brightest and best-trained minds are in the city's shops, factories, and counting-houses; the most indolent, depraved, and degenerate of the nation's entire population can be found a few blocks away. In the great American city there is the east side and the west side—and for all that the one knows about the other they might be in different continents. There is the wholesale district, the retail district, the banking and financial district, the uptown wards and the downtown wards, the negro quarter, the Ghetto, Little Italy, Chinatown, the Polack section—the names vary, but the thing does not. These mottled sections of the city develop their own neighborhood consciousness; their special interests, traits, and prejudices become intensified by the aloofness, and the spread of a common civic patriotism is retarded.

The City's Loneliness.

The city is a place of paradoxes. It is there that we hear most about the ideal of equal opportunity; but see the least actual evidence of it. The city-dweller plumes himself upon his quickness of wit and independence of mind, yet he is superficial in his habits of thought and docile beyond belief when he runs true to type. The city is a place of jostling, shoulder-rubbing throngs by day and night; no one ever manages to get beyond earshot of his fellows, yet it is the most lonesome place to which a stranger can go. If you make your home in a rural community, you will become acquainted with most of your neighbors within a week; you will know all about them, and (if they can find it out) they will know all about you. But if you go as a stranger to live in a city apartment, with only thin walls separating you from your neighbors, you may remain there for months or even for years without becoming acquainted with any of them. You may not even know your neighbor's name, save for seeing it on his door. Neighborliness is a trait of human nature which disappears in the great cities. In the city a man's friends are not his neighbors, as a rule, but persons of his own occupation or interests who may live a considerable distance away. This is an important difference, for it means that townships and villages have a unity which the wards and districts of large cities do not possess. Life in a village or small town is neighborly and personal; in the great city it is a welter of anonymity.

Political Consequences

Jefferson's Prediction.

The growth of cities has everywhere enhanced the difficulties of government. Thomas Jefferson, in the early years of the American republic, predicted that the most serious difficulties of democratic government would be encountered whenever large cities developed in the country. The sage De Tocqueville, writing nearly a hundred years ago, could not with all his optimism rid himself of a premonition that serious dangers to the American republic would come from "the deluge of men rising unabatedly." The rural district, from the nature of things, requires very little government. Its people are habituated to do things for themselves. There is no need to create, by governmental action, a special environment for them. The farmer requires no system of public lighting, water supply, and transportation. He is an individualist; there is every reason why he should be one. But the very fact that people in large numbers come to live together forces upon them a change of attitude towards the proper functions of government. The evils of uncontrolled, individual freedom are soon made apparent, and they demand the intervention of the public authorities. The larger the community, the greater is the need and the more extensive the intervention. Light, water, sanitation, the care of health, transportation, and recreation all become socialized. Public authority takes over, one by one, functions which were formerly left with the individual or the household. The citizen and his family thus become dependent, not only for their comfort and convenience but for their daily necessities, upon the efficiency of the civic paternalism.

The Docility of the City-Dweller.

In the course of time, therefore, the city population loses, to a considerable extent, that self-reliance which is a trait of the rural life; it looks to the elective authorities for leadership; it unconsciously becomes docile and submissive; it takes paternalism as a matter of course. The city-dweller is content to develop personal expertness in doing some one thing; he finds that others will do everything else for him. "If a disorder occurs, it is to be put down by a professional police force; if a fire breaks out, it is to be extinguished, again by a professional fire service; if contagious disease appears, it is to be dealt with, again by a professional health department."[1] The townsman looks on with approval when the school, the playground, the boy's club, the Sunday school, and the day nursery take over duties which in rural communities belong to the home. The cities always give a country its first lessons in socialization and thereby exert a profound influence upon the policy of state and nation.

The Incessant Stimulus of Urban Life.

The city is a place where the individual lives under the spell of an incessant stimulus. His senses are responding without let-up to the sights and sounds that crowd in upon them from all quarters. For this reason, the sociologists assure us, he lives "on the surface of his mind, distracted first by one stimulation and then by another, never reflecting deeply upon anything."[1] He is so overwhelmed by the massiveness of his environment that he yields without resistance to the pressure of influence and example by which he is encircled. Thus he becomes a prey to every sophister who happens along; he is baited by phrases and catchwords however hollow they may be; his discrimination between substance and shadows is often very unintelligent. All this, we have been told, gives the city population a tendency to "mob-mindedness."[2]

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[1] F. J. Goodnow, *City Government in the United States* (New York, 1904), p. 14.

Does the Growth of Cities Promote Radicalism?

But let us turn for a moment from sociology to political history! Has the growth of American cities contributed to mob-mindedness and political radicalism? Does history bear out the theory that large communities are inclined to be fickle and ill-behaved politically? The influence of Paris upon the political life of France is, of course, the stock illustration. Every French revolution has started in Paris; the instability of the capital has stood in marked contrast with the conservatism of the provinces. It is plausible, moreover, to argue that people who own and cultivate land provide a steadying force in the national population, while the landless element is more susceptible to the harangues of the demagogue and to the charms of novelty. In the great cities the landless element is numerically supreme, *ergo* the gradual urbanization of the country is bound to make the whole country more receptive to new political ideas and more radical in its habits of thought.

What Are the Facts?

But when we seek verification of this in the history of American politics during the past fifty years we do not find the search fruitful. The past five decades have seen a good many innovations brought into the various branches of American political life: prohibition, woman suffrage, the direct election of senators, the initiative and referendum, the recall of elective officials, the recall of judicial decisions, commission and city-manager government, the short ballot, proportional representation, progressive income taxes and surtaxes, municipal home rule, non-partisan leagues, agricultural blocs, compulsory arbitration of labor disputes—they form a long list of departures from time-honored ways of doing things.

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[1] E. C. Hayes, *Introduction to the Study of Sociology* (New York, 1915), p. 62.

[2] *Ibid.*, p. 63.

The "Hotbeds of Novelty" in America.

And whence came the inspiration to these changes? Where did the agitation for them begin? Among what sections of the population did these various movements first gain headway? The answers to these questions, if honestly given, do not lend support to the proposition that the large cities are the progenitors of political innovation. Oregon, Missouri, Kansas, North Dakota, Colorado, and other agricultural states have been the initial storm centers in almost every case. In none of them are great cities numerous. The metropolitan areas of America have contributed astonishingly little in the way of impulse to political reconstruction. For the most part they have merely been the "intrepid rear-guards of retreating paganism," as one well-known advocate of political reform has phrased it. What radical features have been projected into the arena of American politics during the past forty years by New York, Boston, Pittsburgh, Buffalo, and the other great industrial centers of the East? If city life tends to "mob-mindedness" or radicalism, why have these cities displayed so little evidence of desire for political change? Reading the political history of the past forty years one would be much more likely to conclude, that in America at least, the trend towards political innovation increases in strength as one moves westward into the agricultural states.[1]

Why City Populations Tend to Conservatism.

One reason for this may perhaps be found in the diversities and disintegrations of economic interest, of race, religion, and even of language, which mark the city population. This serves to hinder the forming of a consensus on any question. The docility of the average urban voter inclines him to follow the counsel of his political leaders, and the latter, for the most part, are averse to change. The city is a fertile field for bosses and bossism, with all that these terms imply. Its political mechanism is complicated beyond the understanding of the man in the street; the citizen is bewildered by its intricacies and contradictions; and his bewilderment is the politician's opportunity. The American city has a poor reputation for political sophistication, and not wholly without reason.

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[1] Examples could be multiplied. It was the agricultural communities that raised the clamor for cheap money after the Civil War; they started the Populist party; they supported the free silver movement. On the other hand, certain reforms of a non-radical character have drawn their momentum in large part from the cities—civil service reform, for example, and the so-termed "efficiency" movement.

The Antipathy of the Rural Voters to the Cities.

For this reason the rural population is inclined to distrust the cities and to insist that they be kept from getting control in the wider areas of government. The rural voters have frequently refused to give the cities their proportionate share of representation in the state legislatures, although such action is quite contrary to the accepted principles of free government. This discrimination is more particularly applied to the large cities. The New York constitution, for example, provides that no county shall have more than one-third of all the state senators; a provision which is intended to restrict the political power of New York City. In Pennsylvania no city or county may control more than one-sixth of the state senate. Somewhat similar limitations exist in at least a dozen other states.[1] The basis of the discrimination is a purely practical one, the rural argument being that it is not well for any state to have its political destinies placed in the hands of boss-ridden industrial communities, however large or important they may be.

The Cities Are Bound to be Controlling Factors in the National Life.

The political problems of the city do not, therefore, concern its own citizens exclusively. The argument that the city should be left free to determine its own form of government and to manage its own business without interference from any superior authority breaks down, as will be seen later, when applied to the actual conditions of city progress. The cities are the controlling factors in the national life of today; they will be even more so tomorrow. The ideals of a people are determined by the dominating element of the population, and this is now composed of the men and women who live in the urban communities. Any betterment in national ideals must come from the cities; any lowering will also have its beginnings there. Men make cities; and the cities, in their turn, make men. But men alone, that is, mere numbers of men, do not make a *great* city. Athens was a great city in all that makes a city great; but her population was less than that of Scranton, Bridgeport, or Fall River!

REFERENCES

The best short discussion of the consequences of city growth is that given in A. F. Weber's *Growth of Cities in the Nineteenth Century* (New York, 1899), Ch. v. Some bibliographical references are included. A readable chapter on the subject may be found in L. S. Rowe, *Problems of*

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[1] Illinois Constitutional Convention, *Bulletins* (1920), pp. 550-554.

Municipal Government (New York, 1908), and there is some good material in Paul Meuriot, *Des agglomerations urbaines dans l'Europe contemporaine* (Paris, 1897). Mention may also be made of A. M. Carr-Saunders, *Population Problems: A Study in Human Evolution* (Oxford, 1922), and J. M. Robertson, *Economics of Progress* (New York, 1918).

In 1920 the Library of Congress issued a typewritten "List of References on Population; Its Decrease and Increase, with Economic Results."

Most of the general works on sociology have something to say about the social effects of urban growth; but it is not always based upon a careful study of the statistical data. After each decennial enumeration the United States Bureau of the Census issues a series of *Bulletins* dealing with such matters as the distribution of the people in urban and rural districts by nativity, by sex, and by age. Additional bulletins cover such matters as birth and death rates, illiteracy, ownership of property, and other demographic features. On the question of urban physique there has recently been made available, as the footnotes indicate, some new and interesting material.

The economic and political consequences of city growth are touched upon in a large variety of books dealing with economic history, applied economics, political evolution, municipal government, the party system, public opinion, bossism, the immigrant in politics, and so on. A bibliography of this subject would make a formidable list, and a brief selection of titles would be of questionable value. To pursue the whole question much further than it has been outlined in the foregoing chapter, moreover, is a task for the student of sociology and economics rather than for the student of municipal government and administration.

CHAPTER VIII

THE CITY AND THE STATE

The Era of Sovereign City-States.

In their relations with the state the cities have passed through four stages. The ancient city, as has been pointed out, was a sovereign city-state; it was subordinate to no outside territorial authority. The city was the head and the heart of the state. Rome was not the creature of the empire, but the mistress of it. There was only one important departure from this régime of independent city-states, namely, in the provinces of the Roman empire where the cities originally enjoyed a large degree of municipal independence, although they were eventually brought under the complete domination of the imperial authorities.

The Era of Free Cities Within States.

Arising out of political chaos after the collapse of ancient civilization, the cities of Europe once more began their progress to local freedom and inaugurated the second stage, an era of free cities, emancipated communes, and chartered boroughs. These were not city-states in the ancient sense, although many of them almost acquired the right to be so designated. Some of them, particularly in the Italian peninsula and in the regions of northwestern Europe, achieved a complete measure of political independence. But they were not overlords of territories extending far outside their own walls, as Babylon, Athens, Carthage, and Rome had been. The authority of their city officials went no farther than the city's boundary lines. The free city of the Middle Ages, moreover, owed its civic freedom to an explicit grant from some territorial potentate; the ancient city-state possessed inherent freedom. Nevertheless the emancipated mediæval city, having once gained its special status, could not thereafter be interfered with by any outside authority. It enjoyed a full measure of local self-government, including the right to misgovern itself if it so chose, which it often did. Mediæval Europe passed through a long era of political and economic decentralization; each city regarded no interest save its own; nowhere was there any clear conception of such a thing as *national* well-being or advantage. It was not until the sixteenth century, or even later, that the rising spirit of nationalism and the growth of power in the hands of territorial rulers served to bring the cities, one after another, into the orbit of central control. Throughout the countries of the continent this drift of centralization was overpowering, and developed such strength that it almost put an end to municipal autonomy. If mayors, aldermen, recorders, and other local officials were permitted to continue in the nominal exercise of their ancient prerogatives it was only because they were ready to function as pliable agencies for carrying out the will of the national rulers.

The Loss of Municipal Independence in Continental Europe.

In England the development of relations between the central and local areas of government took a somewhat different course. It was not merely that municipal democracy achieved a firmer grip in the island beyond the channel, although that probably counted for a good deal. The salvation of the English city's self-determination, in an age when this status was being broken down elsewhere, lay in the failure of the crown to undermine the chief prop of civil liberty, which was Parliament. The Stuart kings, like the Bourbons in France and the Hohenzollerns in Prussia, dared to put the issue to the touch. More specifically they attempted to bring the boroughs under direct royal control by the revocation of their charters and for a time they seemed likely to succeed; but the collapse of the Stuart dynasty terminated the danger and the English boroughs managed to retain a modicum of their ancient independence down to 1835.

Its Preservation in England.

But the subordination of the city to the state in Continental Europe did not last forever. As the central governments themselves became more democratic, their disposition towards the communities grew more lenient and more generous. The French Revolution did not release the communes from national tutelage, but it did assure them an increased share in the management of their own affairs. The American Revolution brought the cities of the new world directly under the capricious mastery of the state legislatures, but it endowed them with a more popular frame of local government than they had possessed in the old era of royal charters, close corporations, and immunity from provincial control. In England the bloodless revolution of the early thirties, commonly known as the epoch of reform, ended for all time the "ancient liberties" of the boroughs and brought them

But Subordination to the State Does Not Necessarily Mean Oppression.

more directly under the guardianship of Parliament; but it also gave them a uniform system of municipal administration which was more democratic than most of them had enjoyed in many centuries.

Nor Yet the Extinction of Democracy.

There is a widespread notion that the subordination of the city to the state spells tyranny, that municipal democracy is never inspired from above but is always evolved from below. If that be the case, a good deal of history has been falsified. The Free Cities of the latter Middle Ages, left to work out their own destiny, degenerated into municipal oligarchies; the chartered English borough, nestling under the ægis of its royal charter and immune from parliamentary control, became the patrimony of a close corporation; the cities of colonial America, endowed with a measure of home rule which no municipality in the United States enjoys today, gave the rank and file of the people a very scant share in the conduct of municipal government. Municipal democracy has developed along with central control and does not antedate it.

The Municipal Codes.

1. In Europe.

2. In America.

The nineteenth century was an era of municipal codes. The central government having taken the problem of the cities in hand, accepted as a matter of course the principle that urban municipalities, whatever their size, should be governed alike.[1] France inaugurated this policy in 1789 by a decree which gave her thousands of communes a uniform system of local government. This was the first comprehensive municipal code adopted by any country. Prussia in 1808 placed the government of all her cities on a uniform basis. About the same time Italy and Spain, under Napoleonic influences, adopted a like course. England enacted her first municipal code in 1835, and during the next forty years a succession of American states fell in with the plan of attempting to regulate municipal government by means of a general law applying uniformly to all cities. Ohio, in 1852, was the first to move in this direction, with Indiana a close second; but in neither of these states was complete uniformity in city government achieved.[2] The Illinois code of

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[1] An exception was sometimes made, however, in case of the national capitals.

[2] The Ohio and Indiana codes were interpreted to limit the classification of cities according to size, but no limit was placed upon the number of classes which might be created, hence these codes did not result in establishing a uniform system of city government.

1872 was the first American municipal code to follow the European precedents exactly; it provided a simple, flexible type of municipal government applying uniformly to every city in the state. Not all the American states, however, were impressed with the advantages of controlling their cities by general law. The majority of them did not frame municipal codes but chose the policy of dealing with each city independently. In such states the legislature granted city charters one by one, a practice which eventually meant that no two cities found themselves with exactly the same form of government. This policy of dealing with the cities by spasmodic action rather than by general rule provided strong incentives to discrimination and favoritism; it led to the granting of powers in one case and the withholding of them in another; it encouraged the enactment of unsolicited legislation relating to the affairs of individual cities and shifted a goodly portion of the responsibility for municipal administration from the city hall to the state capitol.

The Reaction Against State Control in America.

But such displacements of authority usually foment a reaction, and here was no exception. The legislatures having demonstrated an inclination to overreach themselves, the people undertook to provide a safeguard by inserting in the state constitutions a variety of provisions designed to protect the cities against legislative maltreatment. The New York constitution of 1848 and the Wisconsin constitution of the same year, for example, provided that all municipal officers should be elected by the voters of the municipality or appointed by the municipal authorities, thus prohibiting the appointment of city officials by the governor or any other state officer. In other states the constitutions forbade the appointment of special state commissions for the performance of any municipal functions, this having become a favorite device for getting lucrative patronage into the hands of the politicians at the state capitol. Some states went a good deal further than this. Not content with safeguards against the specific abuse of legislative authority the people incorporated in their constitutions a prohibition of *all special legislation* relating to individual cities. Ohio and Indiana led off with this general disbarment in 1851; other states followed within the next twenty years. It became the fashion, indeed, whenever state constitutions were revised during the period following the Civil War, to require that cities be dealt with, European fashion,

Special Legislation Prohibited.

by treating them all alike, affording special privileges to none and making no invidious distinctions. Cities, like the men who lived in them, were to have the equal protection of the laws.

How This Prohibition Was Evaded.

In general, however, this forbidding of special legislation failed to achieve its purpose. By subterfuges of one sort or another the legislatures managed to evade the prohibition, chiefly through the passage of laws which, although general in their form, were special in their application. That they should have done this need excite no surprise, for the policy of attempting to prevent all special legislation by rigid constitutional provisions was bound to fail. It rested upon an unsound basis in that it assumed all cities to be alike in their legislative needs when they are in fact quite diverse. A different legislative prescription for each city's troubles can never be written so long as special legislation is forbidden. This edict of prohibition, moreover, was negative in its method of approaching the problem. It did not recognize any inherent right of the city to frame its own charter and to meet its own local requirements in its own way.

Genesis of the Home Rule System.

Even before the plan of prohibiting special legislation had been given a sufficient trial, however, one state ventured upon what seemed at the time to be a radical experiment, that of giving the larger cities the right to take the initiative in determining the form of their own charters. The legislatures everywhere had been inclined to look upon the city as a mere agent of the state, forgetting that it was also an institution for the satisfaction of local needs. Not until the third quarter of the nineteenth century did any state take the attitude that the municipality, having been duly organized and given power to act, required nothing from the legislature but to be let alone. Missouri (1875) was the pioneer in adopting this policy of municipal "home rule," but California followed in 1879 and at the present time more than a dozen states permit their cities, under various restrictions, to determine their own type of local government. In several other states, as will be explained a little later, the cities have been given the right to choose any one of several optional charters.

It Has Had No Counterpart in Europe.

This is the latest step in the development of relations between the city and the state, a reaction toward increased municipal independence. But only in the United States has the reaction made headway. In England, and in the countries of Continental Europe, the evils of legislative interference have not made themselves so acutely felt, hence there has been no occasion for a movement towards municipal home rule. All European states continue the practice for providing for local government by broad provisions while maintaining adequate safeguards against the abuse of municipal liberty by their system of administrative supervision as will presently be explained.

How Powers May Be Conferred Upon Cities:

1. By Broad Grant (the Continental Method).

Under conditions of today, there are, in general, two possible alternatives which a central government may follow in determining its relations with the municipalities. First, it may bestow a general grant of power upon all cities, without distinction. That is, it may empower the municipal authorities to take full charge of all local affairs, insofar as these affairs are not expressly reserved to the national or state government. The French municipal code of 1884, for example, simply provides that "the municipal council regulates by its deliberations the affairs of the municipality." Nothing could be broader than that. The French and other continental codes are *general* not only in the sense that they apply to all cities alike (with the exception of the national capital) but in that they do not prescribe details. Knowing, however, that any such wide grant of power would be open to abuse, and realizing that neighboring communities might employ their unchecked discretion to each other's detriment, they have provided that the broad powers of the municipality shall be subject to the approval of some higher authority—a central board, or a prefect, or a provincial governor. This is the policy followed by practically all the countries of Continental Europe. The central government deals authority with a generous hand, but it cuts the cards.

2. By Definite Enumeration (the Anglo-American Method).

Second, a central government may bestow on the cities a list of specific powers, enumerating in a general municipal code or in special charters the things which the city authorities may do. Beyond this enumeration the powers of the city do not extend. Anything farther is *ultra vires.* Even within the scope of the enumerated powers the central government may make assurance doubly sure by requiring that the approval of the higher authorities be obtained in certain cases, although this is not usual. But if a city desires any right which has not been expressly conferred it must secure the same by additional legislation. This is the policy followed by Great Britain, by the several American states, and by the British self-governing dominions. The distinction between these two methods of bestowing municipal powers,—by general grant and by definite enumeration—is clear and significant. For that reason it may be worth while to notice the way in which these two policies have evolved and the manner in which they now receive exemplification in the respective countries.

The City and the State in France

Relations between the City and the State in France.

Since 1800, when Napoleon put through his great scheme of administrative reconstruction, there has been no radical change in the relations existing between the central and local governments. During this long period France has been an empire twice, a monarchy twice, and a republic twice; but no matter what the type of central government the Napoleonic scheme of centralization has been preserved in all its essentials. There have been changes in the spirit of administration from time to time, and some changes in the letter of the laws as well; but the fundamentals have stood unaltered. For a time after the fall of Napoleon in 1815 the Bonapartist municipal system remained intact, but in 1830 an important concession to local democracy was made by providing that municipal councilmen should thereafter be elected by the voters of the commune, an educational qualification being prescribed. The mayors and adjoints, however, continued to be appointed by the national government upon recommendation of its prefects, with the stipulation that the choice must be made from among the members of the municipal council. Other concessions to the principle of local self-government were made in 1848, some of which were revoked a few years later when Napoleon III became emperor. This period of the Second Empire, from 1852 to 1870, was marked by the strictest sort of central control. In every French city the people continued to choose their councilmen, ostensibly on a basis of manhood suffrage; but the real authority in municipal administration rested with the mayor and his adjoints who were not elective officers. The municipal councils, during this period, did little more than approve the plans laid before them by the mayor and other executive authorities. The political life of the French municipalities remained dormant down to the overthrow of the Second Empire.

Course of Their Development Since 1800.

Present Organization of Central Supervision.

The government of the Third Republic, which was established in 1871, proceeded to revive the spirit of municipal self-government, but did not venture to do this completely. The unsettled state of affairs in France made it desirable that a considerable measure of control over the municipalities should be maintained. In the smaller communes the council was at once given the right to choose the mayor and the adjoints; but this privilege was not accorded to the larger municipalities until 1882. The prefects, moreover, remained as before and continued to exercise on behalf of the central government a close control over municipal affairs. Having settled upon the policy of continuing local election with central supervision, the government of the Republic in 1884 consolidated into a comprehensive code all the laws relating to municipal administration.

The Code of 1884.

The relations between municipal and central government in France are established by the municipal code of 1884 and by the various amendments which have been made to this general law during the past forty years.[1] Save in a few rather exceptional instances there has been no special legislation for French cities during this period, although the French parliament is not prohibited from enacting laws applicable to individual communes if it should choose to do so.[2] The only restraint is a strong public sentiment that holds all communes to be equal before the law and insists that they be treated alike unless there is some good reason for treating them differently.

French Cities Do Not Have "Home Rule."

It must not be imagined, however, that the absence of legislative interference is synonymous with the absence of central supervision,—that the French city has "home rule" in the California or Oregon sense of the term. While the provisions of the French municipal code give the local authorities the power to govern "the affairs of the commune," there are numerous important restrictions upon the free exercise of this power and there is also an elaborate mechanism for the maintenance of central supervision. This mechanism, indeed, is more elaborate and more efficient in France than in Germany, Great Britain, or the United

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[1] The municipal code does not apply to Paris. Its provisions govern the 36,000 communes of France. Within the general term "commune" are included all municipalities from the smallest villages to the largest cities, Paris alone excepted.

[2] Conspicuous examples are the laws which provide for a special police régime in Marseilles and Lyons.

States. It represents a high pitch of administrative centralization.

How the Cities Are Supervised.

The converging point in the national government's supervision of the French municipal system is the ministry of the interior at Paris. The head of this ministry is a member of the national cabinet and like other members of that body holds office for no definite term. His tenure is dependent upon the will of the Chamber of Deputies. Ministers come and go at frequnt intervals, but changes in the chief ministerial post have little effect upon the system of central supervision, for the work of the ministry is performed by a permanent staff; it is largely of a routine character, and is neither altered nor interrupted by the fall of cabinets.

Work of the Prefects.

Some of the ministry's supervisory functions are performed directly; but the larger part of the work is done by the prefects. France is divided into 89 departments with a prefect at the head of each.[1] The prefect is nominally appointed by the President of the Republic, but the actual appointing power rests with the minister of the interior. The prefects, however, do not go in and out of office with changes in the ministry; they are professional officers who have risen by successive promotions from the lower ranks of the national administration. The functions of the prefect in relation to municipal government are multifarious. He fixes the dates upon which the municipal councils meet; he may suspend council sessions, or may even request the President of the Republic to dismiss councillors from office. He has important powers in relation to the municipal budget, no item of which becomes effective without his approval. Where the budget exceeds three million francs it must have the approval of the minister of the interior as well. In his scrutiny of the budget the prefect may insert items in that portion of it which relates to estimated receipts, but in the case of estimated expenditures he may not insert new items unless he finds that the council has omitted to make provision in the budget for any expenditures which have been rendered obligatory by law. If a municipal council fails to adopt any budget at all, the prefect

Their Powers.

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[1] Prior to the World War there were 86 departments. Three additional departments were added through the recovery of Alsace-Lorraine. There are also three departments in Algeria which are dealt with, for most purposes, exactly as though they were in France itself.

is empowered to prepare one covering the necessary expenses and to put this into force by his own decree. The prefect's approval is also necessary for all municipal borrowing above a certain amount. No regular debt limit is fixed by law. The prefect (or in the case of certain large loans, the minister of the interior) decides each loan-project on its merits. There are various other matters, also, on which the action of the municipal council does not become valid until after the prefect has signified his concurrence.

State Control of City Officials.

While each French city (with the exception of Paris) is permitted to choose its own local officers, a few municipal officers are named by the prefect or by the ministry. The most important of these is the city treasurer, who is appointed directly by the higher authorities from a list of three names submitted by the city council. The municipal police officials, moreover, although appointed by the mayor, must be confirmed by the prefect. The mayor and his adjoints are technically responsible for the conduct of local administration; but in many matters, especially those relating to police, fire protection, and highway administration, they merely act as the agents of the prefect who may override their decisions at any time. It should also be mentioned, as a matter of practical importance, that all the administrative officials of the commune with the exception of the mayor and the adjoints are men who have professional qualifications and are disposed to obey whatever instructions come from the prefecture even though such action may not please the mayor and council. For mayors abide their destined hour and go their way; while the prefecture and the ministry are permanent institutions.

The City and the State in Germany

Relations Between the City and the State in Prussia.

In Prussia the existing relations between the state and cities are determined by the Municipal Code of 1853, which is in all its essentials a revision and elaboration of the earlier code that Prussia adopted under Baron von Stein's influence in 1808.[1] The Revolution which followed the World War made several important changes in the organization of German city government; but it did not alter the general relations between the municipal and higher authorities.[1]

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[1] The Code of 1808 applied to all communities, rural and urban, while the ordinance of 1853 included only towns (*Städte*) within its scope.

Prior to 1808 the cities of Prussia possessed no appreciable measure of local self-government. Their burgomasters and councilmen had been even appointed by the royal authorities or chosen by some plan of co-optation. The rank and file of the citizens had no share in the selection of their own officials. Places of honor and profit in the municipal service were given to the bureaucrats and courtiers who enjoyed the favor of the crown. It was the custom of Frederick the Great to bestow municipal positions upon worn out military officers in order that the royal treasury should not bear the burden of pensioning them. At times, indeed, municipal offices were sold to the highest bidder; the qualifications of the officials mattered nothing, for most of the places were sinecures, with few duties or none at all. Along with these civil officials the king frequently appointed military governors who took control of all the more important municipal functions, such as the cleaning and paving of streets, the relief of the poor, the regulation of markets, and the raising of taxes. City property was looked upon as royal property, and in keeping with this theory the king placed his own officials in charge of it. The intervention of the crown in local affairs was incessant and arbitrary. All state officers and all persons in the military service were declared immune from the jurisdiction of the city authorities and exempt from local taxation. This exemption from local taxes was regarded, indeed, as a mark of royal favor which the king could confer upon whomsoever he chose, like a medal or an iron cross. It has been estimated that at the close of the eighteenth century one-half the population of Berlin was exempt from the jurisdiction of the city authorities.

1. Prior to 1808.

2. During the Napoleonic Period.

Local initiative and responsibility thus were reduced to their lowest terms. The citizens had been so completely dragooned into submission that when Napoleon overran Prussia in 1806 they accepted their new masters with scarcely a murmur.[2] The coming of the French seemed to mean no loss of municipal liberty, for there was none to lose, but only a change of suzerains. During the period of French occupation the Prussian towns were, in fact, given an increased measure of self-government. In many of them the French system of local government was established, with an appointive mayor and an elective council. Napoleon abolished the practice of putting military officers in charge of town affairs. Berlin, for the time being, was governed by a commission (*comité administratif*) which was indirectly chosen by the citizens. In a word, the old system of local government, which had possessed no principle of cohesion but had been held together by a combination of absolutism and military power, now clattered to the ground.

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[1] A new municipal code is now (1923) under consideration by the Prussian parliament.

[2] "With incredible indifference" as Treitschke puts it.

3. The Stein Reorganization.

On the morrow of this debacle, the Prussian statesman, Stein, managed to persuade the king that the national spirit could not be revived save by a series of far-reaching and drastic reforms, including the reconstruction of the municipal system. Accordingly, a municipal code was framed, applying to all the towns of the kingdom, and went into force on November 19, 1808.[1] This reconstruction of town government, be it noted, was not in response to a clamor from the citizens. There is no evidence that the people of the Prussian towns, any more than those of the English boroughs during the same period, were crying aloud for an effective voice in the management of their local affairs. Their desires were not consulted; the reorganization was imposed upon them from above. From Stein's point of view the reconstruction of local government was undertaken primarily in the interests of the Prussian kingdom and not merely for the benefit of the urban and rural communities.

4. State Control from 1808 to 1853.

The Municipal Code of 1808 purported to give the towns of Prussia an independent and efficient form of government.[2] It gave to the citizens of each town, acting in the main through their own elective officers,[1] full control of all municipal functions except two, namely, police and judicial administration.[2] These were to remain in the hands of the royal authorities. But the control of local police, if the royal authorities should see fit, might be delegated to the bürgermeister or to some other city official. Even with these limitations, however, the grant of local autonomy was astonishingly generous. It indicated the changed orientation which, throughout Europe, resulted from the French Revolution. It went farther, indeed, than it was wise to go at one step, and although there was no immediate reaction as in France during the years 1789-1802, the process of whittling down the legacy of municipal independence was begun in Prussia before very long. This movement continued intermittently until 1853 when the Prussian government, in its revision of the code, abandoned Stein's policy of permitting secret and equal suffrage in the towns and substituted the "three-class system." It also reasserted much of the influence and control over town government which it had surrendered in 1808. This action greatly disappointed the people of the cities, especially the liberal element, and at the Berlin elections of 1854 less than 20 per cent of the qualified vote was cast.

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[1] The inspiration undoubtedly came from Stein, but there has been much controversy as to whether Stein had much to do with the framing of the code. It is certain that he owed a good deal to a Königsberg jurist named Frey who contributed some of the main ideas of the code. It is significant that although Stein was an admirer of English political institutions the code of 1808 bears no indications of English influence. In the matter of free local government England had little to teach the world at this time. France was a better source to draw from in 1808 and several provisions of the Prussian Code hark back to the Revolutionary Decree of December, 1789.

[2] "To give the towns a more independent and efficient constitution, to create for them in the civil parish a firm point of union, to give them an active influence upon the government of the community and by such participation in local government to stimulate and preserve public spirit" (Preamble).

5. From 1853 to 1918.

The *Städteordung* of 1853, like the code of 1808, purports to leave the city authorities in full charge of their local affairs. It does not try to specify where their powers begin and end. It is couched in broad terms and does not provide for central control of municipal functions, the only express exceptions being police and judicial administration. But the police function in Germany has been given a far broader interpretation than it receives in France, England or America. In Germany it is a function of the police not only to establish and preserve the public peace, order and security, but to avert any danger which threatens the public or the individual. Under this definition of police func-

Extension of the Police Power.

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[1] The *Bürgermeister*, or chief municipal executive, was to be named by the crown from a list presented by the town council. Other high administrative officials were to be chosen by the council and confirmed by the authorities of the province.

[2] In Stein's memorandum explaining the code it is stated that "the citizens are charged with the undivided administration of their communal affairs. The influence of the state is restricted to supervision." This may have been Stein's ideal; but it is not what the code actually provided for or obtained.

tions there is no limit to central interference, for almost anything can be designated as an incipient danger. By virtue of this reserved police authority the central government began, almost immediately after 1853, to widen its jurisdiction, and it kept on doing so until the Revolution of 1918. In some of the larger cities the police power was extended to give the state control of the municipal fire protection service. Everywhere, during the latter part of the nineteenth century, the central government assumed the right, as a corollary from its police control, to take full charge of sanitation and public health, to make building regulations for cities, to enact housing laws, to grant or to prolong franchises, to order the construction of streets or other public works, to make market regulations, and to do a host of similar things without consulting the city authorities. In Berlin, under the Kaiser's inspiration, it even assumed the right to designate where public monuments might be erected—monuments paid for by the city!

The Logic of This Extension.

The logic of the central government's stand in this matter was sound enough. Danger to the public interest, which the police are enjoined by the laws to avert, cannot be forestalled by the use of restrictive or punitive measures only. Hence the police authority, it was argued, must be armed with the right to take positive and constructive measures as well. Bad housing may be a contributory cause of crime; therefore the police should take charge of the housing situation. At any rate the history of the Prussian cities during the nineteenth century demonstrated in striking fashion the way in which central control could be steadily and insidiously extended over the cities without any express changes in the municipal code, but merely by an expansive interpretation of its "police" provisions.

6. Since 1918.

The Revolution of 1918 made some changes in the form and spirit of city administration, as will be seen later; but it did not release the cities from the tutelage of the central authorities. The latter still control the police of the cities and the scope of police jurisdiction has thus far remained unaltered. Republican officials have assumed the duties which royalist commissaries exercised before the war. It is possible, and indeed probable, that when the new government feels a greater degree of security with respect to the maintenance of public order in the cities, it will relax the strictness of its supervision. This, indeed, is contemplated by the provisions of the new municipal code which is now (1923) pending before the Prussian Landtag.[1]

The City and the State in England

The Basis of State Control in England.

Although the cities and boroughs of England are commonly thought to be governed by the provisions of the Municipal Corporations Consolidation Act (1882), the relations of the municipalities to the national government are not primarily determined by that code. The powers of the municipal authorities, and the control of the central government over them, are not set forth in any one enactment but are scattered through various general and special statutes. "Let the town clerk of an English municipal borough be asked what powers his council can exercise, and he will point to volumes of laws and heaps of text books. He will answer that he is trying to learn but does not yet know for certain. And the greater his experience the greater will be his incertitude. For not only are the warrants for these powers scattered about in countless statutes and orders and bylaws, but nothing can be done for which there is not express legal sanction; the powers granted are subject to a variety of interpretation, and no one can be sure what the plainest of laws mean until it has been rewritten by the courts, while the bogey of *ultra vires* confronts the local authority at every turn."[2] This difficulty in determining the scope of local powers is due not only to the multiplicity of enactments but to the fact that the English boroughs are in many matters carefully chaperoned, if not actually dictated to, by a variety of central authorities, whose action, whether strict or lenient, cannot always be predicted.

Growth of Central Supervision in England during the Past Half-Century.

Central control of English city government has been established, step by step, through a series of parliamentary measures. Some of these are general statutes dealing comprehensively with a particular subject, such as the Public Health Act of 1875 or the Education Act of 1918. Such measures confer mandatory powers upon the municipal authorities with the stipulation that all of them, or some of them, shall be exercised under central supervision. Others are adoptive acts, so-called, such as the Public Libraries Act of 1892, the Light Railways Act of 1896, and the Housing and Town Planning Act of 1909. They are termed adoptive acts because the boroughs do not acquire the powers enumerated in them until after the act has been "adopted" by a two-thirds vote of the borough council. The powers, also, are not usually granted without reservation; but must be exercised under the supervision of some central authority. By these two classes of statutes, both of them numerous, as well as by the force of precedent and custom, the English central government has established a system of far-reaching and detailed supervision over many matters of city administration. But the thing which renders the boroughs directly dependent upon the good offices of the central government is the necessity of obtaining additional powers from time to time by "private" acts of Parliament or by "provisional orders."

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[1] The new Prussian Constitution of November 30, 1920, contains the following provision: "Municipalities and groups of municipalities have the right of local autonomy in their affairs under the supervision of the state as may be determined by law." Section vii, Art. 70.

[2] W. H. Dawson, *Municipal Life and Government in Germany* (London, 1914), p. 33.

Private Bills.

This is a noteworthy feature of the English municipal system. Unlike the cities of France or Prussia, the English boroughs have received no broad grant of authority. They obtain their powers piecemeal. When an English borough desires some right that it does not already possess, one method is to petition Parliament for a special act. A bill is drawn by the city's legal advisers, and, after due notice, is presented at Westminster. Here it is classified as a "private bill" and is considered under a special procedure which the rules of Parliament prescribe for such measures. This procedure usually involves the reference of the bill to the appropriate government department (such as the Ministry of Health, the Board of Trade, or the Home Secretary) for examination and report. If the department opposes the measure it may nevertheless be passed by Parliament; but the chances are heavily against such passage. On the other hand a favorable report by the department virtually ensures the success of the measure.

The Situation in England and in America Compared.

It is for this very practical reason that the various supervisory departments, although they possess no formal veto upon the grant of increased powers to individual cities, are in a position to exert a constant and effective pressure upon the municipalities. The city authorities cannot afford to be regularly at loggerheads with the higher powers. In the United States we are quite familiar with the practice of petitioning the legislature for special statutes on behalf of individual cities; but the legislature rarely asks and even more rarely follows the advice of any state administrative department in such matters. Whether the city's request will be granted or denied by an American legislature depends wholly upon the inclination of that body itself.

Provisional Orders.

The control of municipal affairs which arises from the system of "provisional orders" is equally important or more so. This procedure is interesting because it exists nowhere save in Great Britain. The purpose of the "provisional order" arrangement is twofold, namely, to relieve Parliament from the necessity of considering a host of minor applications for special statutes and to permit greater flexibility in the relations of the central to the local authorities. A provisional order may be defined as "an order made by a department of the government which acquires the force of law either automatically or by the express confirmation of Parliament." The right to issue these orders, on matters within their special spheres of jurisdiction, has been granted by Parliament to several of the national departments, including the Ministry of Health, the Board of Trade, the Ministry of Transport, the Home Office, the Board of Education, and the Board of Agriculture.[1] When, accordingly, a city desires to borrow money, or to erect municipal tenements, or to extend its water supply system, or to acquire an electric lighting plant, or to build a poor house, or to do any one of various other things, it may seek this power by means of a provisional order rather than by special act of Parliament. The borough council authorizes a petition to the appropriate department; the latter makes an enquiry into the merits of the application and then either grants or refuses the order.[2] If the order is granted the power becomes effective at once, although all provisional orders are subject to parliamentary confirmation. This confirmation, however, is a formality, it is almost never refused. As a matter of practice, large numbers of provisional orders are put together into a single confirmation bill and Parliament ratifies them *en bloc,* usually without comment or debate.

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[1] It should be pointed out that a "board" in the English usage, is not necessarily a body of two or more persons. A single official may, in effect, constitute a board. On paper a central board usually consists of a chairman and two or more other members; but the chairman exercises all the power and takes all the responsibility. The other members are silent partners. There are no board meetings. Such a thing as the board members outvoting the chairman would be unthinkable.

[2] The Ministry of Health grants provisional orders in matters relating to poor relief, public health, water supply, sewerage, and sanitation. It also took over from the old local government board, which it replaced in 1919, the sanctioning of municipal loans by provisional order. The Board of Trade is the department to which the cities apply for provisional orders relating to certain public utilities. If, for instance, the council of an English city desires to own and operate a public lighting plant, or a street rail-

Advantages of the System.

The system of provisional orders makes possible a close, intelligent, and flexible supervision of municipal affairs by the central authorities. It provides what is in effect a system of *administrative* control, although in form the control is *legislative.* To a certain extent it combines the good features, and avoids the evils of both. But the system would not be practicable in the United States so long as the executive and legislative branches of state government are kept apart, with the former independent of the latter. Its successful working postulates an executive which enjoys the full confidence of the legislature and can count upon the certain ratification of its acts.

Summary.

The tradition of local autonomy has always been strong in England and for that reason no symmetrical mechanism of state control has been built up as in continental countries. The system of central control is not, indeed, a *system* at all, but a number of detached control-centers, each exercising authority which is sometimes well-defined and at other times rather vague, and each drawing its right of supervision from many statutes. It is full of loose ends.[1] Beginning in 1835 with a system of purely legislative control, England has been slowly drifting away from this method. The supremacy of Parliament over the cities has not been impaired; all central control is still legislative in its ultimate sanction; but during the past fifty years the extension of central supervision over municipal affairs had been very largely in the direction of administrative guidance. Most of it

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way or to extend its activities in any field of public utilities operation it must either obtain authority by a special act of Parliament, or, what is more usual, must secure a provisional order from the Board of Trade or the Ministry of Transport empowering it to do so. The Home Office may issue provisional orders in certain matters relating to municipal police and the Board of Education may grant them in matters affecting the schools. It should be borne in mind that no department or board has an *inherent* right to grant provisional orders; it may do so only by reason of express authorization of Parliament.

[1] For an example of central control by means of "grants in aid," see Vol. II, Chap. XXXI.

has been accepted by the municipalities without protest, and on the whole the central authorities have encountered surprisingly little opposition from the city officials in the exercise of their supervisory powers. This is fortunate, because the machinery available to the central authorities for making their supervision effective is slow-moving and expensive to all concerned. Usually it involves an appeal to the High Court of Justice for a writ of mandamus compelling the municipal authorities to do what they have been ordered to do. Unless the issue be very important the game is not worth the candle. So, if the citizens of the borough do not raise a ruction when the orders of the central authorities are ignored, the latter are not often disposed to call in the aid of the courts.

The City and the State in the United States

The Lack of Uniformity in America.

Central control of the cities, in the various countries of Europe, whether it be rigid or flexible, legislative or administrative, is at least uniform. Here, again, America is defiantly different. The relations of the American city to the state are far from being uniform in all parts of the country. Each state, in this matter, is a law unto itself. In all of them, however, it is a recognized legal principle that the city has no inherent right of self-government and must derive all its powers from the state.[1] This broad principle is almost everywhere asserted, but it must not be construed to mean that the state legislatures everywhere hold the cities in the same form of political tutelage. They could not do this if they chose, for legislatures are themselves restrained by three potent checks, namely, constitutional limitations, the influence of tradition, and the force of public opinion.

Checks upon State Control of American Cities.

The freedom of the state legislature to deal with cities at its discretion is restricted (*a*) by the terms of the national constitution, and (*b*) in most cases by provisions which have been incorporated in the constitution of the state itself. The federal constitution, as is well known, contains in its bill of rights various provisions designed to protect the citizen against abuses of power on the part of the public authorities. It stipulates, for example, that private property shall not be taken for public use without just compensation, that no citizen shall be deprived of his

Limitations in the Federal Constitution.

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[1] For a statement of the contrary view, see People *v.* Hurlbut, 24 *Michigan*, 44, and also the references given *below*, p. 172.

property without due process of law, and that the equal protection of the laws shall not be denied by any state to persons within its jurisdiction. What the states themselves cannot do, by reason of these limitations, they obviously cannot authorize their cities to do. They cannot, for example, empower municipalities to revoke a franchise at will, or to fix the price of gas so low that it would be an act of confiscation, or to repudiate their debts. They cannot even authorize their cities to forbid the erection of billboards on private property.

A Rule That Does Not Work Both Ways.

On the other hand, the city, although it is a corporation, and therefore a *person* at law, has not been generally held to be entitled to this constitutional protection as against the state. Cities have often invoked the guarantees of the federal constitution against being deprived of their property without just compensation or without due process of law, but not with great success. It is true that the courts have intervened in a few cases to prevent the transfer of city property, by legislative enactment, to private corporations. But they have not been willing to prevent the forcible transfer of a city's property to a county, or to another city, or to the state.[1] The national constitution affords the citizen a broader protection against the municipal corporation than it affords to the latter against the state.

Limitations in the State Constitutions.

More important and more numerous are the limitations imposed upon the legislatures of states by their own constitutions. In the earlier state constitutions these restrictions were few; often there were none at all affecting municipal government. By the middle of the nineteenth century, however, the disposition to insert checks upon legislative interference with local administration had become so marked that whenever state constitutions were revised some such provisions were almost invariably inserted. During the last fifty or sixty years this tendency has grown stronger, until it has nowadays come to be taken for granted that whenever a state adopts a new constitution or revises an old one it will use the opportunity to insert various restrictive clauses relating to local government.

Their Nature.

Such constitutional limitations upon the freedom of the legislature to deal with city affairs are therefore of great variety. Many of them relate to the form of city charters or to the methods of framing them. In some states the legislature is forbidden to charter cities by special act; in others it is required to grant all charters by general act. Some state constitutions prohibit changes in city charters unless they are made with the consent of the citizens; others guarantee to the voters of cities the right to frame their own charters,—in other words, to adopt "home-rule" charters. A common limitation prevents legislatures from giving cities undue borrowing powers, or power to grant perpetual franchises, or permission to loan their credit to private enterprises. A full list of these various limitations would be an elaborate affair; it would fill many pages of this book; but if accurately compiled today it would be inaccurate tomorrow, for the limitations are being constantly enlarged and extended.

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[1] See below, pp. 216-219.

Public Sentiment for Non-interference.

Apart from the checks imposed upon the legislatures by these constitutional provisions there exists in the United States a tradition which favors the policy of letting the cities alone. This tradition is much stronger in some parts of the country than in others, but everywhere it is a factor to be reckoned with. Public opinion has frequently shown its resentment in cases where state intervention in municipal affairs seemed to be dictated by partisan motives; the intervention has proved a boomerang to the political party responsible for it. A certain amount of state control and supervision over municipal government is absolutely essential, as will be indicated in the next chapter; no legislature can be expected to keep its hands off the cities altogether. But just where rightful activity ends, and factious interference begins, is a question which cannot be determined by the application of a general rule. It depends upon the immediate situation. It is beyond doubt that the line has been crossed many times, yet the extent of the evil has been exaggerated. The American city has not been tyrannized to the extent that some writers would have us believe.[1] On the whole it has had quite as much self-determination as the European city—in many respects a great deal more.

Some General Conclusions.

The relations between state and municipal government in the different countries may be summarized briefly in three or four general statements: In all countries the city is legally subordinate to the state or nation. With a few notable exceptions there are no longer any Free Cities in the old sense.[1] In the countries of Continental Europe it is the practice to legislate for all the cities uniformly (the national capital sometimes excepted) by means of a general code, to give them broad grants of power, and to depend upon administrative supervision as a safeguard against the abuse of this power. In the United States the cities are not chartered uniformly, nor, as a rule, do they derive their powers from municipal codes; they are given specific grants of power, and the only supervision is that which the legislature itself exercises.[2] In England the present situation represents a halfway point between there two extremes. There is charter uniformity and a code. But municipal powers are given by specific grants as in the United States. Central supervision is legislative in principle but administrative in fact. A certain amount of central control over local government is essential everywhere; and in the last analysis it does not differ greatly in extent among the various countries. There has been no more of it in America than elsewhere.

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[1] For an example, see F. C. Howe, *The City: the Hope of Democracy* (New York, 1905), pp. 162-163.

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Questions affecting the relation of the American city to the state have been discussed by many writers. Brief discussions of the subject may be found in F. J. Goodnow and F. G. Bates, *Municipal Government* (New York, 1919), Ch. vi-vii; F. C. Howe, *The Modern City and Its Problems* (New York, 1915), pp. 76-85; W. T. Arndt, *The Emancipation of the American City* (New York, 1917), pp. 3-44; and Everett Kimball, *State and*

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[1] The Free Cities of the German Commonwealth (Hamburg, Bremen, Lübeck) are the only exceptions.

[2] For an interesting exception, see below, pp. 180-182.

Municipal Government in the United States (Boston, 1922), Ch. xxi. Mention may also be made of The Illinois Constitutional Convention *Bulletin No. 6* (Springfield, 1920), and the Massachusetts Constitutional Convention, *Bulletin No. 11* (Boston, 1918), both of which deal with the subject of municipal home rule.

The legal aspects of the matter are exhaustively dealt with in H. L. McBain, *The Law and the Practice of Municipal Home Rule* (New York, 1916), and there is a chapter on "Home Rule by Legislative Grant" in the same author's *American City Progress and the Law* (New York, 1918), pp. 1-29. Mention should likewise be made of Professor McBain's enlightening discussion of: "The Doctrine of an Inherent Right of Local Self Government" in the *Columbia Law Review,* Vol. xvi, pp. 190, 299 (1916), and of William Anderson's *Law of Special Legislation and Municipal Home Rule in Minnesota* (Minneapolis, 1923). Extensive discussions may also be found in John F. Dillon, *The Law of Municipal Corporations* (5th edition, 5 vols., Boston, 1911), Vol. I, pp. 140-472, and in Eugene McQuillin, *Law of Municipal Corporations* (vols. 1-6, Chicago, 1911-1913; supplementary vols. 7-8, Chicago, 1921, Vol. I, pp. 373-564; Vol. VII, pp. 6481-6555). William K. Clute, *The Law of Modern Municipal Charters* (2 vols. Detroit, 1920), is poorly arranged but contains much valuable information.

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CHAPTER IX

CITY CHARTERS IN EUROPE AND AMERICA

No Charters in Ancient Cities.

City charters were unknown in the ancient world. Most of the cities controlled their own destinies from the outset, and where they passed under the sway of some more powerful community they received no formal document prescribing the degree of liberty that they might enjoy. In the Roman republic there were many cities which enjoyed varying degrees of self-government, but their privileges rested upon toleration and under the imperial rule this self-governing status was greatly impaired by the issue of general decrees. Nevertheless the provincial city of Roman times, however modest its proportions, was entitled to call itself a commonwealth (*respublica*) and its body of citizens a *populus*. Men called themselves citizens of their respective cities, not citizens of the empire.

Or in Early Mediæval Times.

The concept of a corporation, of a body of persons possessing a corporate personality, was a Roman invention, and a corporate status was given to the Roman provincial municipalities. But when the barbarians overran the empire they had no matured legal ideas; the idea of a corporation, or aggregate of individuals possessing a unified status, was wholly beyond their ken. Such cities as had existed during the Roman period were therefore regarded by the northern conquerors as mere parts of the territory in which they were situated; they went under the sway of a bishop, lord or duke just as if they had been rural territory. And they remained under this baronial control until, in the course of time, they began to obtain their charters of emancipation.

The Earliest Charters of Privileges.

This charter movement, as has been seen, had its beginnings in the eleventh century, but these earliest charters, so called, were not charters of incorporation. They were grants of privileges to all the citizens of a designated community, it is true; but they did not form the citizens into a unified legal group. Apparently they held good only for the life of the lord or duke or king who granted them—at least that was the general impression. For this reason prudence dictated to the townsmen that they should obtain, whenever their suzerain changed, a confirmation of their charter. The records of the mediæval period are filled with such confirmations. Henry II, for example, granted to the citizens of London a charter of privileges, and this charter was successively confirmed by Richard I, by John, and by Henry III without any additions or alterations.[1]

The Earliest Charters of Incorporation.

The privileges conferred by these charters were of a public character and accrued to all the inhabitants of the commune or borough, not to any specified group of freemen. The practice of giving *charters of incorporation,* which formed the citizens (or a portion of them) into a body corporate and endowed them with special rights did not arise until later. The purpose of these charters was to give the boroughs a special legal status, but their actual effect was to emphasize the private or close character of the corporation; for the corporation did not include all the citizens but only a certain fraction of them. In England the first charters of this sort were those granted during the fourteenth century.[2] It is not improbable, however, that long before this idea of an artificial civic body gained expression in formal charters most English boroughs had gained for themselves a natural corporate existence. The borough had long been regarded as an aggregate body acting as an individual, making by-laws, having a common seal, holding property in succession, and appearing in courts of law. The formal incorporation of boroughs in the fourteenth and fifteenth centuries did not materially alter the town constitution; it was in most cases merely a recognition of existing franchises with a stronger accentuation and a more precise formulation of the right of independent action as a collective personality with a distinctive name, especially as regards the holding of real property. In the sixteenth, seventeenth and eighteenth centuries the term "corporation" was more commonly applied to that select governing body, which, since the fourteenth century, had gradually usurped the earlier popular government in most boroughs.[1]

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[1] Charters of confirmation were commonly called *inspeximus* charters because they usually began with a preamble stating that the king had examined the earlier charters. It was not until the time of Edward I that this wording became common. London had more than a hundred confirmations, extending over seven centuries. Sidney and Beatrice Webb, *The Manor and the Borough* (2 vols., London, 1908), Vol. II, pp. 569-570.

[2] Charles Gross, *The Gild Merchant* (2 vols., Oxford, 1890), Vol. I, p. 93.

How the Earlier Charters Were Granted and Revoked.

The original method of obtaining municipal charters, accordingly, was by grant from a feudal lord or from the king.[2] Each town or borough was dealt with separately; the privileges conferred on them by charter were not uniform. Charters, once granted, could not be revoked by the crown except for cause and then only after adjudication by the courts. When the king desired to penalize a city he caused one of his legal officers, therefore, to ask the courts for a writ of *quo warranto*. The borough officers were then summoned to show cause why the charter should not be revoked. When the courts were completely under the king's control, as sometimes happened, the borough had little chance to make a successful defense, as was shown in the reign of Charles I when the famous Judge Jeffreys, at the king's behest, demolished the borough charters "like the walls of Jericho."

Beginnings of the General Charter System.

The system of special charters emanating directly from the crown was almost universal during the seventeenth and eighteenth centuries. It was in full flourish throughout the countries of Continental Europe, as well as in England and the American colonies. The first radical departure from this special charter system was effected in 1789 when the Revolutionary government by legislative decree accorded equal status and privileges to all the communes of France. Prussia followed with her general municipal code in 1808, England in 1835, and various American states at successive dates thereafter.

The Four Plans Now in Use.

Throughout the nineteenth century the several countries of Europe held firm to the plan of incorporating cities by general law, giving them all the same form of municipal organization and bestowing uniform powers. The United States, on the other hand, has had experience during the past hundred years with four different methods of granting municipal charters. These four plans may be called (*a*) the special charter plan, (*b*) the general charter plan, (*c*) the home rule charter plan, and (*d*) the optional charter plan.

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[1] *Ibid.*, Vol. I, p. 95.

[2] In various boroughs of England *de facto* corporations were recognized. These were cases where no formal charters had been given, but where the crown in some official document had happened to mention it as having an incorporated status.

1. The Special Charter Plan.

The special charter plan, as has been said, is the oldest of them all. While it has practically disappeared in Europe it is still operative in a number of American states, although no longer in the majority of them. The special charter system is based upon the principle that the city is merely a division of the state, created for the more convenient exercise of governmental powers, and without any inherent right to be immune from state interference. It assumes, moreover, that every city presents a special problem and should be dealt with separately. Every city, accordingly, receives from the legislature a charter which is thought to be adapted to its needs, and the charters of no two cities are necessarily alike. The ostensible merit of the plan is that it cuts the garment to fit the wearer; but it has the defect of placing a heavy burden on the time of the legislature; it provides a standing temptation to legislative intermeddling with municipal affairs; and it deprives the municipal system of all uniformity.

How Special Charters Are Obtained.

In states where the special charter plan is used the customary first step toward the acquisition of a municipal charter is the presentation to the legislature of a draft measure. This may be done by the city authorities, by some semi-public body, or by individuals. The proposal is duly referred to the appropriate legislative committee; hearings are held; the committee makes its report, and the charter is passed or rejected in the legislature. If enacted it may go into force without further formality or it may contain a provision that it is not to become effective until ratified at the polls by a majority of the voters in the city concerned. The practice of attaching a referendum clause to special city charters has become very common in the United States during the past twenty-five years.

2. The General Charter Plan.

(*a*) In Europe.

The general charter plan, as has been said, is still employed throughout the countries of Europe. Apart from the national capital, all the cities, large and small, in each country, are incorporated under the terms of a general municipal code. Cities receive no separate charters but merely become entitled to the rights and privileges which appertain to all incorporated communities under the terms of the general law. Because of the great variation in the size and problem of the cities, however, it has not been found possible to apply this rule of uniformity with unqualified rigor. So, while the cities owe their incorporation to a general law, and are alike subject to its provisions, their governments are not all exactly alike, nor are their powers absolutely uniform. The municipal codes make some provision for flexibility in organization by providing that cities of a certain size may have larger councils, or more administrative officers. The powers of the cities are set forth by the codes in uniform and broad terms, but this has not prevented the giving of additional powers to individual cities by special statutes or by administrative decree. In England this development has proceeded farthest of all. There it can now be fairly said that the cities are governed by the terms of a general law to a very limited extent; a large part of their present-day authority rests upon special statutes and provisional orders.[1] English cities do not possess uniform powers, and the same is true, although to a much smaller extent, of French, German and Italian cities. The system of administrative discretion has permitted the central government in each of these countries to loosen the rein here and to tighten it there, as the need for such action may appear. Ostensibly the cities possess the same dowry of rights; but in fact some have considerably more than others.

(*b*) In the United States.

In the United States the practice of granting each city a special charter was in vogue during the colonial era and continued after the Revolution. During the middle of the nineteenth century, however, the frequency with which the state legislatures, often for purely partisan reasons, interfered in the local affairs of individual cities led some of the states to insist, by constitutional provision, that all cities should be dealt with by general law. The example was widely followed and before the close of the century the constitutions of about twenty states required the legislature to provide general acts for the incorporation of municipalities.[2]

Evasion of the General Charter Plan in America.

This requirement was in some cases evaded by the practice of dividing cities into classes and enacting what purported to be general legislation for each class.[3] The courts, when cases came before them, usually ruled that (unless specifically prohibited by the constitution) the grouping of cities into classes was allowable, provided the classification appeared to be based upon the varying needs of the cities. The way in which this procedure sometimes operated is shown by the experience of Ohio during the half century from 1852 to 1902. In the first-named year the Ohio legislature enacted a general law which divided the cities of the state into two classes and provided a somewhat different form of organization for each. The courts upheld this twofold classification, whereupon the legislature in due course proceeded to make further classification, until eventually there were eleven classes, eight of which contained only one city each. Population was held by the courts to be a proper basis of classification, even though this arrangement might result in placing a city in a class by itself.[1] Accordingly, when the legislature desired to enact a special law for any individual city it usually managed to accomplish its purpose by placing the city in a special class.[2] So the requirement of general legislation did not protect the cities against special laws. Where the end could not be secured by an elaborate classification, it was achieved in other ways. In some instances laws were made general in form but so phrased as to be applicable to a single city.[3] Occasionally the requirement was evaded by the establishment of police districts, or school districts, or sanitary districts, which included nothing but a single large city, or possibly with a small area outside. For such "districts," once established, the legislature could pass as many special laws as it pleased, since the requirement of special legislation applied to "cities" only.

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[1] See above pp. 165-167.

[2] In some other states the constitutions, while not requiring the passage of a general act, forbade the conferring of powers on individual cities by special legislation. F. J. Goodnow, *Municipal Home Rule* (New York, 1906), pp. 58-59.

[3] In some states (e.g., New York, Minnesota and Kentucky) the constitution itself classified the cities, thus limiting the legislature's discretion; in several other states the legislature was authorized to classify as it might see fit; and in some no mention of classification was made.

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[1] It is not to be urged against legislation, general in form, that only one city in the state is within the particular classification at the time of the enactment. If any other city may in the future, by virtue of its increase in population, and the action of its municipal authorities, ripen into a city of the same class and grade, and come within the operation of the act, it is still a law of a general nature." State *v.* Pugh, 43 *Ohio State Reports*, 98.

[2] It was held in Ohio for example that a law applying to all municipalities "having within their limits a college or a university" was a general act (irrespective of the fact that only one city might conform to this designation) for the reason that the presence of a college or university in the city might create special problems. Bronson *v.* Oberlin, 41 *Ohio State Reports*, 476.

[3] For example, it was easy to use such form as this, "Any city of over 100,000 situated on a navigable river," or "any city having within its limits an avenue more than 100 feet wide known as Lincoln Avenue," or "any city in which a state normal school is located," etc. All are general in form but may well be individual in application.

Defects of the Plan.

The plan of chartering cities by general laws never achieved conspicuous success in the United States. This is partly because American legislatures, unlike those of Europe, failed to show any adherence to the spirit of the plan. They riddled it with evasions. But in any event, American cities have become too varied in their needs and problems to be dealt with in a uniform way. It is absurb to require that Cleveland and Xenia, the one a hundred times as large as the other, shall be dealt with in exactly the same way by the laws of Ohio. Even in Europe the largest cities are usually exempted from the operations of the general law. Still, the general charter system in the United States has not been a complete failure. To the smaller cities in several of the states it has afforded a measurable protection against undue legislative interference. Their form of government, even if it does pinch at one point and hang loose at another, has had the virtue of stability, for rather than go to the trouble of circumventing the constitution in order to reach these smaller communities the legislatures have usually let them alone.[1]

Its Negative Merits.

Assuming for the sake of argument, that the general charter system could be safeguarded from evasion, would its merits outweigh its defects? Its chief merit, of course, is the protection which it would then afford against state interference in local affairs. Incidentally it would save the legislators from the disagreeable and time-consuming task of dealing with cities one by one. But these virtues are negative. The general charter system does not give the cities an opportunity to exercise their own initiative in charter-framing; it places a damper upon individual experiments in municipal government. It affords no constructive inspiration. The general charter system operates tolerably well in European countries, even though cities of widely varying size come within its range; but this is because of the great flexibility which is provided within the provisions of the general law by the European system of administrative supervision.

The New York System.

Nearly thirty years ago the framers of the New York constitution (1894) established a plan whereby they hoped that the merits of the general charter system might be retained and its disadvantages avoided. They divided the cities of the Empire State into three classes and provided that the legislature might enact, at its discretion, any law affecting all the cities in any one class. Realizing, however, that there might be good reason for an even narrower application of some particular measure, the New York constitution made the further provision that the legislature might enact laws "which relate to a single city or to less than all the cities of a class" but that such measures, when passed by the legislature, should be sent, before becoming effective, to the city or cities concerned, for approval or rejection.[1] If accepted by the city authorities the measure then goes to the governor for his signature or veto, as in the case of other bills; but if the municipal authorities disapprove the measure it must be again passed by the legislature before it can become effective. In this way individual cities have a veto on special legislation affecting them. Although not an impregnable defense against state interference it has provided the municipalities with a considerable measure of protection. "The right of a suspensive veto has unquestionably been highly beneficial to the cities of New York. Indeed it has in very large measure, though not entirely, put an end to positive legislative interference in their affairs."[2] This plan, likewise, offers no constructive inspiration to the cities. The New York legislature, during the thirty years since 1894, has shackled the initiative and governmental progress of the cities by repeatedly refusing its assent to new charters asked for by them. The legislature's veto upon the proposals of the cities has been even more effective than the suspensive veto of the cities upon the proposals of the legislature.

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[1] H. L. McBain, *The Law and the Practice of Municipal Home Rule* (New York, 1916), p. 100.

The Illinois Plan.

A somewhat different method of affording the cities a guarantee against special legislation has been used in Illinois. By an amendment to the constitution of that state, made in 1904, it was provided that no special laws affecting Chicago should be effective until after adoption by the voters of the city. Great things were expected from this recognition of the city's absolute veto power, but great things have not come of it. Since 1904 Chicago has been spared the necessity of taking what it does not want;

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[1] If the measure concerns any city of the first class (New York, Buffalo or Rochester) it is submitted to the mayor alone; in the case of all other cities the authority to approve or reject rests with the mayor and council.

[2] H. L. McBain, *The Law and the Practice of Municipal Home Rule* (New York, 1916), p. 103.

but it has usually been quite unable, on the other hand, to obtain what it does want. A virtual deadlock in the matter of obtaining charter changes has been the outcome. The legislature, as a rule, has not been willing to enact what Chicago desires, while the people of Chicago show no eagerness to accept what the legislature gives it. In twenty years they have accepted only three or four special legislative acts in all.

The Anachronism of State Interference in City Affairs.

In a previous chapter it was pointed out that the course of municipal development during the first half of the nineteenth century was profoundly affected by the influence of the federal analogy. The two-chambered city council, the gradual separation of executive from legislative functions, and the growth of the mayor's powers are outstanding examples of this influence. Rather strange it is, however, that the most important of all features in the American plan of government, namely, the division of powers between the nation and the states, seems to have provided for the benefit of the cities no analogy at all. The federal constitution left the states a very large measure of self-government. It assured them a great sphere of activity upon which the national legislature was, under no circumstances, to encroach. It was framed on the principle that affairs of national scope should be dealt with by the nation and all other matters left to the states.

An Analogy That Has Not Been Applied.

Why did not the states apply the same rule to the relations existing between themselves and their municipalities? Why did they overlook the greatest of all lessons which American political experience disclosed to the world during the first half of the nineteenth century,—the lesson that different governments, each endowed with an independent power, could whirl in their own orbits without colliding? Would it not have been easy for the state to say to its cities: Here are powers of state-wide scope which the state legislature alone must control; all the rest, the whole category of local authority, belongs to you? You are entitled to a measure of home rule similar to that which the states enjoy within the nation. Such an attitude would not have been at all inexplicable. The city is a logical unit of government, even more so than the state. Chicago, for example, has problems quite different from those of the other parts of Illinois; but the problems of Illinois, as a state, are not widely different from those of Ohio or Indiana.

Not until 1875, however, was there any indication of a readi-

3. The Home Rule Charter System.

ness to concede the right of a city to determine its own form of government and to exercise, without external interference, entire discretion in the handling of its own municipal affairs. This innovation made its first appearance in Missouri, where the constitution of 1875 gave to all cities of over 100,000 population the right to frame and adopt their own charters. A special provision was incorporated for St. Louis. The arrangement was simple enough: the people of the city were empowered to elect a charter commission or board of freeholders; this body was to frame a city charter; the charter was then to be submitted to the voters of the city and if accepted by them was to become effective without the necessity of approval by any higher authority.

Its Spread.

California followed Missouri's example in 1879; but there were no further converts to the home rule plan until 1889 when Washington followed suit, and only one more (Minnesota) from this date to the end of the century. Four states in twenty-five years, and none of them with many large cities! The home rule movement did not seem to be spreading like wildfire. But the first dozen years of the new century were marked by much more rapid progress. Eight states joined the procession during this period—four of them in the single year 1912.[1] Then ensued a halt, and in the last ten years there has been only one further addition to the list of home rule states.[2]

The System Explained.

What is the system of municipal home rule as it now exists in these states? In no two of them are the detailed arrangements exactly the same, but the general outlines are much alike. These are as follows: The state constitution concedes the right of the cities to take the initiative in determining their own municipal government.[3] The initial step in framing a city charter may be taken by a prescribed number of qualified voters. But this is not the only method. The city council, in most cases, may of its own volition take the first step. In any event the first step is to petition for the election of a charter commission or board of freeholders as it is sometimes called.[1] This body, usually made up of thirteen or fifteen members, is entrusted with the work of drafting the new charter. As a rule the commission holds public hearings, appoints committees to draft the various sections of the document, studies the workings of local government in other cities, and finally emerges with a finished document.[2] After this has been published and subjected to public discussion the question of its adoption is placed on the ballot at a regular or special election.[3] As a general rule a bare majority of the qualified electors voting upon the charter is sufficient; but in Missouri and Minnesota a four-sevenths majority of the voters is required.[4] In most of the states the charter, when ratified by the voters, becomes effective without approval by any higher authority; in a few of them there are some further formalities, but they are not usually of much significance. In any event the will of the people in ratifying a charter is practically never set aside by the state authorities.[5]

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[1] Colorado (1902), Oregon (1906), Oklahoma and Michigan (1908), Arizona, Ohio, Nebraska and Texas (1912), Pennsylvania (1922). The Pennsylvania provision is permissive only. Maryland has adopted a plan of county home rule which virtually places Baltimore in the municipal home rule category.

[2] It will be noted that constitutional provision for municipal home rule is made by only one state along the Atlantic seaboard and only one in the South. The movement has made its chief headway in the West.

[3] The right may extend to all cities (Minnesota, Oregon, Michigan, Ohio), or to cities of over 5000 (Nebraska and Texas), or over 20,000 (Washington).

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[1] In Minnesota the judge of the district court appoints the "freeholders" or members of the charter commission. In Oregon no special commission or board is constituted. The new charter may be drawn either by the city council or by the petitioners themselves.

[2] Very often the members of the board are not free to follow their own judgment in determining what provisions ought to be included in the new charter. Some of them are pledged before election, as a rule, to support this or that type of charter. As men of widely different views are chosen at the polls it is difficult to obtain unanimous agreement upon any question, hence charters framed in this way usually contain many provisions which are the result of compromises between conflicting opinions within the membership of the board.

[3] In Ohio and California it is provided that a copy of the proposed charter shall be mailed to every voter.

[4] A table showing all the detailed requirements relating to petitions, the composition of the charter-drafting board, and the ratification of the charter at the polls is printed in H. L. McBain, *The Law and the Practice of Municipal Home Rule* (New York, 1916), pp. 114-117.

[5] In Michigan the charter must be submitted to the governor of the state before it goes to the people; the governor may veto it, but his veto can be overridden by a two-thirds vote of the charter commission. In Arizona and Oklahoma the charter goes to the governor after its ratification by the voters; the governor may veto it if he finds it to be in conflict with the constitution or laws of the state, not otherwise, and his veto cannot be overridden. In California the charter, after ratification by the voters, goes to the state legislature, which may pass or reject it as a whole, but may not make amendments. It has, in fact, never rejected a home rule charter.

Amendments to Home Rule Charters.

The procedure for amending a charter is much the same except that the amendment is usually framed by the petitioners or by the city council, not by a special board elected for the purpose. In other words, charter amendments in home rule cities are made by the ordinary process of direct legislation. A few states, while not granting a full measure of constitutional home rule, have made statutory provision by which new charters, framed and ratified by the voters of a city, may be submitted to the legislature for enactment. The legislature retains full power to deal with such proposals as it sees fit, but the likelihood of its altering or rejecting such charters is, as a practical matter, very small.[1]

Limitations on the Scope of Municipal Home Rule.

To what extent is a charter commission or board of freeholders free to insert in the charter whatever provisions it may think best? In a few cases there is a requirement that the charter must be of a certain general type or must provide for certain definite things.[2] But the all-important requirement is that no provision of the home-rule charter shall be in conflict with the constitution or the general laws of the state. This limitation is definitely established in ten of the home rule states.[3] The result is that the amount of actual freedom depends upon the nature of the general state laws. These may cover a large portion of the municipal field, or they may leave it relatively free. In one case the charter commission has relatively little discretion; in the other it has a great deal.

What Are "Local Affairs"?

A common provision is that the city shall have full liberty to deal with all strictly local affairs; but this begs the question as to what matters are *local* rather than *general* in character. No axiom can be laid down upon this point nor can any principle be deduced from the numerous court decisions. Matters which relate to police, elections, taxation, and assessments have usually (but not always) been held to be of general importance, and when a provision of the city charter conflicts with the state laws on these matters it is void. The situation thus created gives opportunity for endless litigation whenever new charters are adopted, or whenever new laws of a general character passed. Nor does it appear that the interests of clarity can be served by trying to define the city's sphere of jurisdiction, as the experience of Colorado has shown. There will be litigation in spite of all definitions. It is manifestly impossible to enumerate one by one all the powers which home rule cities should be permitted to exercise and if any detailed enumeration is attempted some important things are likely to be left out.

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[1] H. L. McBain, *American City Progress and the Law* (New York, 1918), pp. 23-25.

[2] In Missouri the charter must provide (in the case of all cities except St. Louis and Kansas City) for a mayor and a bicameral council, one branch of which shall be elected at large. In Michigan it must contain provision for the use of the initiative and referendum in ordinance-making; and so on.

[3] The exceptions are Colorado and Oregon.

Merits of the Home Rule Plan:

The home rule plan, nevertheless, has some distinct merits. First among these is the fact that it usually enables a city to obtain whatever type of governmental organization its people may desire. While it is doubtless true that the mere form or type of government is not a vital factor in determining the efficiency of a city's administration, it is none the less apparent that no local government can be accounted successful unless the people have confidence in it. A government ought to be popular as well as efficient. But governments which are imposed from above, and not created by the action and consent of the governed, are rarely popular. The average American citizen sees no good reason why he should not enjoy self-determination in local affairs. It is useless to argue with him that state legislators, by virtue of their larger experience, can devise a better charter than he and his fellow citizens can frame. He does not believe it. In any case he prefers his own handiwork, be it better or worse. If, therefore, a charter is imposed upon a city by the legislature, it will always draw the blame when things go wrong. There are thousands of intelligent New Yorkers who firmly believe that the tap-root of metropolitan mismanagement can be found at Albany. It is astonishing how cheerfully the average citizen will tolerate mediocre government so long as it is of his own manufacture, and how readily he will place the onus of maladministration upon anything that has imposed upon his city from outside.

(*a*) Its Popularity.

(*b*) It Ensures Greater Care in Charter-Drafting.

Home rule charters are homemade charters, but this does not mean that they are inferior to the legislative product. There is no reason why they should be. Legislators as a class, and even members of legislative committees, have no special competence in making city charters. On the other hand, the citizens who constitute a municipal charter commission or board of freeholders, while they may not know much about the principles of political science, at least know their own city, its needs, its problems, and its desires. Experience proves, moreover, that these charter commissions do not go about their task lightly or without a proper appreciation of the difficulties involved. They study the charters of other cities; they get information from all quarters, and not infrequently they summon for consultation men who are experienced in the work of charter-framing. They do not start with the thought that their own city has nothing to learn from others, or that methods must be good because they are traditional.

(*c*) It Lessens the Burden on the Legislature.

State legislatures, as a rule, find it impossible to bestow upon city charters and charter amendments the amount of time and thought that their importance demands. With the rapid growth of cities a veritable avalanche of requests for new charters or for charter amendments descends upon the legislatures of the more populous states every year. In Massachusetts there are now thirty-eight cities, not to speak of at least a dozen towns, which have populations large enough to qualify them as cities. At the legislative session of 1922 more than three hundred bills were referred to the respective committees on cities, on towns, on municipal finance, and on metropolitan affairs. It is a conservative estimate that at least half of these bills were proposals to amend, in one way or another, the charter of some Massachusetts city. Every one of these three hundred bills was given a public hearing; every one of them was reported favorably or unfavorably to the legislature by the committee to which it had been referred. It is absurd to suppose that any legislature, in view of the other demands upon its members, will give adequate attention to so many measures of strictly limited interest. Massachusetts is not alone in this predicament. Every other state which contains numerous cities is likely to have the experience unless it throws upon the cities the burden of settling their own charter problems. Matters affecting a single city evoke very little interest save among those legislators who come from the immediate vicinity.

(*d*) It Releases the Cities from Rural Domination.

In most of the state legislatures, moreover, the rural representatives are in the majority. This is partly because the rural population is still predominant in nearly all the states, but it is also due, in some cases, to the fact that the rural districts are artificially over-represented in the legislature.[1] This arises from the common rule that no county shall have more than a certain proportion of the entire legislative membership. Under the system of legislative charter-making, therefore, the "up-state" senators and assemblymen have the controlling voice. These men, no matter how sound their practical sense or how good their intentions, are not well-versed in the conditions, problems, and needs of the urban communities. Most of them have a strictly bucolic point of view.

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[1] For the reason see p. 148.

But although they have neither special knowledge, interest, or competence in urban matters this does not deter them from acting as though they possessed all three. How often have we seen legislation imposed upon New York, Philadelphia, and Cleveland by slouch-hatted Solons from the rural hamlets who gather at Albany, Harrisburg, and Columbus to settle the affairs of great commonwealths! The outlook of the rural legislator is that of the neighbors whom he represents; his ideas as to what the people of the cities ought to do are determined by his own parochial prejudices. Usually he wants urban frivolities restrained with a stern hand and looks upon the city as a wayward child that needs to be chastened. The larger American cities are constantly chafing under the trammels of restrictive legislation imposed upon them by those keepers of the rural conscience.

(*e*) It Promotes Civic Education.

The home rule charter system is sometimes eulogized as an agency of civic education. Those who pitch their song of praise in this key begin by expatiating upon the apathy which exists wherever the system of legislative charter-making prevails. The citizens, they tell us, take no great interest in discussions relating to things which they cannot control. Their natural impulse is one of hostility to whatever the legislature may propose to do. It is their suspicion, not always unfounded, that the passage or rejection of measures affecting the city will not be determined by the wishes of the citizens or by the merits of the measures, but by influences of an extraneous sort. They know that the political skill of those who are behind the measure, and their influence with the dominant political party in the state legislature, will count for more than the petitions or the protests of citizens.

When, however, the initiative and the final decision in charter-making rests with the people and not with the legislature, public interest is bound to become broader and more intense. Popular responsibility, we are told, begets popular interest. The work of the charter commission is closely followed; the local newspapers feature its deliberations; the whole process becomes a living issue to the people of the city. For weeks before the charter election the various features of the document are debated and discussed at club meetings, before labor unions, at board of trade luncheons, and wherever bodies of citizens gather. It may be quite true, as sometimes asserted, that even with all this discussion, many voters go to the polls in home rule cities with no clear idea of what they are voting for, but the amount of knowledge and interest is certainly greater than when there is no popular responsibility.

(*f*) It Makes Possible a Divorce of Municipal from State Politics.

It is accounted very desirable that issues of municipal politics should be kept apart from those of the state. But so long as a state legislature possesses the right to interfere at will in city affairs, and so long as it adopts the policy of doing so, there is little chance of keeping state and municipal issues apart. Home rule facilitates the separation of the two. It eliminates the appeal which, in some of the larger American communities, is so persistently made to the state legislature by people who do not like the way in which the city's affairs are being managed and are impatient for drastic remedies. The temptation in this respect has been increased by the fact that the political complexion of the large city is often different from that of the state. New York City is overwhelmingly Democratic; the state is normally Republican. The same is true of Boston and Massachusetts. The municipal minority, believing itself to be unfairly dealt with at the city hall, turns to its party friends at the state capitol. Municipal questions thus become issues in state elections; state politics inject themselves into municipal campaigns, and purely local questions drop into the background. Municipal home rule does not put a complete end to this evil but it affords a considerable measure of relief.

Objections to the Home Rule System.

The home rule charter system, on the other hand, is open to some serious objections. Were this not so it would have been much more widely adopted. The objections, in the main, are of a practical character; they arise from the necessary interrelation of city and state problems. The advocates of municipal home rule are fond of applying to the city the principle enunciated in the Declaration of Independence that government ought to rest on "the consent of the governed." A sound principle, no doubt; but are there no limits to its applicability? If cities and towns are entitled to complete self-determination, why not also the wards of the city? Why not the precincts within the wards? Is a city of ten thousand entitled to home rule, while a city ward of fifty thousand people is denied the same right? It will be replied that wards and precincts are only artificial divisions; but so is the municipality itself. New York City's present boundaries owe their origin to a legislative enactment, to a stroke of the legislative pen. Within fifteen miles of the Massachusetts State House there are some thirty cities and towns, all contiguous, a jumble of communities great and small. No one but an expert in local topography can tell where one ends and the other begins. Is each one entitled to the right of self-determination regardless of the effect which its exercise of that right might have upon all the rest? The answer to this question is clear. Self-determination for local communities obviously cannot be insisted upon as a matter of principle.

(*a*) The Danger of Overworking the Principle of Self-determination.

The question is not one of principle but of expediency. How far is it advisable in the interest of the larger community, the state, to give a sphere of independent action to the lesser areas of government? The interests of the whole are greater than those of its parts. Few would advocate municipal home rule to the detriment of the entire commonwealth. From this angle it soon becomes apparent that the home rule charter system is subject to important limitations. In many matters the city is the agent of the state and it is altogether desirable, if not imperative, that the agents of the state should act in a uniform way. Take the matter of local taxation, for example. The raising of local taxes to pay local expenses might be thought to be a matter of strictly local concern; but would anyone seriously contend that cities should be given unrestrained freedom to tax whatever they please in whatever way might seem to their own advantage? We should presently have each city using its taxing power as a means of discrimination against its neighbors.[1] The city police, again, are charged with the duty of enforcing the state laws. Can we fairly ask the state to surrender its right to make the enforcement of its own laws effective? Is the safeguarding of

(*b*) The City, Being the Agent of the State, Must Be Subject to Its Control.

(*c*) Home Rule Would Degenerate into Misrule.

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[1] For a further discussion of state control over municipal taxation and borrowing, see Vol. II, Chaps. XLIII-XLIV.

the public health a function which can be left to the discretion or caprice of each individual community? Can we safely permit local option in the matter of quarantine, the reporting of communicable diseases, and the safeguarding of public water supplies? Or, take another example—municipal indebtedness. It might be plausibly argued that cities, like individuals, should be left free to borrow as much money as they please, provided they can get somebody to lend it; but we must not ignore the fact that if a city becomes bankrupt the state must find some way of getting it back to solvency. A state cannot disclaim all responsibility for what may happen to its cities. The credit and reputation of the state are affected by what goes on in any community within its borders. As the cities become more numerous and more important, as one state after another becomes urbanized, the interrelation of municipal and state activities becomes closer and hence the two are more difficult to divorce. The general laws are compelled, in the public interest, to take over the regulation of many matters which, under simpler conditions, could safely be left to the local authorities.

(*d*) The Field of Strictly Local Affairs Is Too Narrow to Mean Much.

A complete measure of home rule, therefore, is not practicable, and no state has attempted to confer it. Even a large degree of home rule is becoming less and less practicable as the growth of cities proceeds. In those states which profess to give it most generously the area of local self-determination is being steadily whittled away. There is no good reason why each city should not have liberty to determine its own *form* of government, assuming that it makes provision for those officers whose work is essential to the carrying-out of the city's functions as the agent of the state. The method of choosing its own officials, their general duties, and their routine methods may also be left to local determination. But the activities of the city in relation to such matters as police, health, education, poor relief, corrections, sanitation, elections, taxation, indebtedness, and the control of public utilities cannot be prudently left without supervision. These things are not of purely local concern under the conditions of today.

4. The Optional Charter Plan.

In keeping with the desire to afford cities a reasonable degree of latitude in determining their own frame of government, while reserving to the state full control of everything which is of more than strictly local concern, some of the states have inaugurated in recent years an optional charter system. New York in 1914 led the way by enacting a law which contained six fully-drawn charters, each of a different type. Provision is made in the law that any city except the three largest may take its choice from this array. Massachusetts in 1915 established four options.[1] Ohio and Virginia have passed somewhat similar laws. The merit claimed for the optional charter system is that it gives every city a reasonable latitude in choosing its form of government yet guards against the situation which has arisen in the home rule states, namely, the frequent conflict between charter provisions and the general laws. The optional charters have been drawn with great care; they are in harmony with the state constitution and laws; they are turned over to the cities with an assurance that there are no incipient lawsuits lurking among their provisions. Only one state has adopted the home rule plan during the past ten years; five states have established the optional charter system.

Summary.

In European countries, to sum up the whole matter, all city charters are granted in the same way—by a general charter law or municipal code; in the United States they are granted in at least four different ways, which may be briefly recapitulated. First, there is the general charter system as in Europe, in some cases with a division of cities into two or more classes. Second comes the special charter system, an arrangement under which each city is dealt with by the legislature individually. In some states the legislature's freedom is curtailed by the requirement that a special charter does not become effective until it has been accepted by the city concerned. Third, there is the home rule charter plan, and, fourth, the system of optional charters. A few states use several methods concurrently. In Ohio, for example, a city may frame its own charter under the home rule plan, or it may adopt any one of the optional charters which have been provided by statute, or it may accept from the legislature a special charter not included among these options.

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[1] These embody the following types of municipal government: (*a*) mayor-and-council plan with large powers in the mayor's hands and small council elected at large; (*b*) mayor-and-council plan with considerable powers accruing to a larger council, the latter elected partly by wards and partly by the city as a whole; (*c*) the commission plan; and (*d*) the city manager plan.

What a City Charter Contains.

What does the city charter contain? The charter is the constitution of the city; it may contain a relatively small number of general provisions or it may go into great detail. The general charter laws or municipal codes of the various European countries are fairly long documents even apart from the various amendments that have been added to their various provisions. In the United States the length of the charter depends to some extent upon the size of the city, but the tendency in all cities during recent years has been to specify everything with considerable minuteness. The charters range all the way from a small pamphlet to a bulky volume. The present charter of New York City forms a book of 1478 pages.

The Arrangement of Charter Provisions.

In their form or arrangement city charters are much the same. They begin, as a rule, with a statement of the city's boundaries. Then follow provisions relating to the structure of municipal government, the organization of the executive and legislative bodies, the manner in which officials shall be nominated and elected (unless these things are already provided by state-wide laws), the duties of officers and their relation to one another; the organization of the various city departments, and so on. In addition there are various sections relating to the method of making appropriations, the awarding of contracts, and the audit of accounts. The length of a charter depends upon whether such matters are incorporated in the document itself or are left to be provided by ordinance. There is a good deal to be said for the policy of putting only fundamentals into the charter, leaving the city council to establish the administrative machinery as it may think best and to arrange the details. It is only in this way that necessary changes can be made from time to time without trouble or delay. Some charters name all the departments and designate how much salary the heads of these departments may receive in salaries. That betokens a misconception of what the charter is supposed to be. It is the city's organic law or constitution, not its code of administrative regulations.[1]

Common Faults in City Charters.

The majority of American city charters contain too much detail. Whole pages are often devoted to a recital of specific powers or to the organization of a single department.[2] The object is to prevent the city from undertaking things outside its province; but the result, very often, is to restrict its freedom so greatly that the service which it renders to its own citizens is greatly impaired. Many long provisions seem to have been framed on the assumption that city officials are too grasping for power, or incapable, or corrupt, and that they should therefore be bound hand and foot by shackles of law. Experience has proved, however, that the more intricate the provisions of a charter the greater are the opportunities for evading them when city officials set out to achieve that end. The citizen who has not made a special study of these complications is at a great disadvantage as compared with the municipal politician who, although he may be profoundly ignorant of many other things, is always a master of this.[1] The purpose of a city charter is not merely to guard against extravagance, mismanagement, and dishonesty. It is primarily an instrument for permitting and encouraging the efficient exercise of public authority along proper lines.[2]

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[1] For a further discussion see Vol. II, Chap. XXIII.

[2] For a characteristic example, see the Minneapolis Charter of 1920 in which nearly five pages, set in 6-point type, are used in detailing the ordi-

(*a*) Too Much Detail.

Apart from this congestion of detail a serious fault of American municipal charters has been the tendency to over-emphasize the provisions which deal with political framework, while neglecting those which relate to the city's financial and business methods. Bitter controversies have been waged in charter commissions upon the question whether the city should have nine councilmen or thirteen, whether the names should be placed on the ballot alphabetically or by lot, and whether this or that number of signatures should be needed to have some matter referred to popular vote. Yet no city has ever gained or lost good gov-

(*b*) Too Much Stress is Laid on the *Type* of Government.

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nance-making powers of the council, and several further pages of legalistic verbiage are employed to narrate its other powers.

[1] Nathan Matthews, *Municipal Charters* (Boston, 1915), p. 5.

[2] "The average charter of today is a hodge-podge of powers, organization, standards and detailed business procedure. It not only prescribes the machinery for managing city affairs, but also sets forth in the minutest detail just how, and many times for how much, that machinery shall be operated. Not only is the city authorized or required by its charter to perform a certain public function, but in many instances there are mandatory provisions as to how it shall be done, by whom, how much compensation each official or employee shall receive, and many other rigid details, all of which should be left to the judgment of the city administration. This practice is based upon the fallacious assumption that the powers of public officials should be so restricted as to prevent possible abuse." W. P. Capes, *The Modern City and Its Government* (New York, 1922), p. 84.

ernment by deciding these questions pro or con. What counts for more than anything else is the skill, the care, and the intelligence with which charter provisions are framed in relation to such matters as publicity of official proceedings, the civil-service system, appointments and removals, contracts, borrowing, audits and accounting, the purchase of supplies—in a word, the business provisions of the charter.

(*c*) Too Much Technical Verbiage.

A good deal of slovenly work has found its way into American city charters, although not so much of late as in earlier years. Lawyers have naturally had a large share in the preparation of these documents; for lawyers always figure prominently in the membership of legislative committees and charter commissions. It is assumed that men of this profession, even those who have devoted no particularly study to municipal affairs, are nevertheless better qualified than experienced laymen to determine how charter provisions should be framed. And lawyers are partial to technical phraseology. Hence it is that a great deal of legal verbiage has been written into city charters, even where a few simple sentences would have achieved the desired end much more effectively.[1] The trouble with most legal terminology is that the courts already have had it before them for interpretation and have often given it a meaning altogether different from that which it bears in ordinary usage.

(*d*) Too Little Attention to Orderliness of Arrangement.

The arrangement of the various provisions in American city charters is often poor. Clauses relating to the same topic are scattered through various sections of the document, while dissimilar provisions are sometimes incorporated under the same heading. The charter is commonly divided into chapters, and these, again into sections, subsections, and paragraphs, each chapter with its own serial numbering. When an amendment is made, affecting several sections of the charter the effect is confusing. It is much better to number the sections in a single series throughout the charter.

Very few city charters are built anew from the ground up. One city copies the charter of another, making changes here and

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[1] The traditional redundancy of legal documents goes back to the day when solicitors and conveyancers were paid by their clients at so much per folio of one hundred words. The temptation to say everything in the longest way—whether in deeds, petitions, wills, or statutes—was too strong to be resisted. All legal documents have been greatly simplified during the past generation; but a tradition so strong cannot be quickly broken down.

(*e*) Too Much Copying from Other Charters.

there to suit itself. The result is a scissors-and-paste-pot performance. This is a risky method, especially when sections are clipped from different charters in which the same terms may be used to express different ideas. It is a method which is sure to bring trouble when the copying is done from charters of cities outside the state. A section in the charter of Kansas City, let us say, attracts the attention of the authorities in some Ohio municipality. Word for word, or with a few minor changes, it is copied and adopted. Presently it is discovered that the transplanted provision conflicts with some half-forgotten clause in the Ohio state constitution.[1] It is quite unsafe to take anything from the charter of another city without making careful enquiry into the actual workings of the provision in question and a study of the judicial decisions bearing upon it. Terminology which has a construed meaning in one commonwealth may have a different construction in another. To copy is much easier than to frame anew, of course, but in the long run it rarely saves either time or trouble. The success of the United States constitution as a relatively clear and unambiguous document is in no small measure due to the fact that its framers copied almost nothing from anywhere; they made the document brief and used a minimum of technical phraseology.[2]

"Model" City Charters.

From time to time it has been suggested that a "model city charter" might be framed by experts as a guide for city chartermakers. On more than one occasion, indeed, serious attempts in this direction have been made, and they have served a useful, although a somewhat limited, purpose.[3] The practical difficulties are great because a city charter must link itself up at various points with the general laws of the state in which the city is located, and these laws are far from uniform throughout the country. In most states it will be found that such matters as the suffrage, taxation, public health, the condemnation of property for public use, the registration of births, marriages and deaths, the inspection of weights and measures, the school system, poor relief, the judicial system, the scope of the municipal borrowing power—that these and many other matters are covered by the general laws. But they are not everywhere covered to the same extent or in the same way. Where state-wide laws cover any matter it is superfluous to repeat their provisions in a city charter; where they do not cover it the charter must do so.[1] It is almost impossible, therefore, to frame a model charter for general use throughout the country and this apart from the consideration that cities are too varied in their size, needs and problems to be fitted to any one model. Even within the bounds of a single state this variation in size impairs the usefulness of any stereotyped draft. Nevertheless these model charters have proved useful in that they afford examples of orderly arrangement, clearness of expression, and reasonable conciseness.

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[1] It has not been uncommon, in my own experience, to find a charter commission on the point of copying from some other community a provision which has proved quite unsatisfactory in its place of origin, or a provision which, unbeknown to its far-off admirers, had been repealed in the charter from which it was proposed to copy.

[2] An astonishingly small amount of legislation has arisen from ambiguity in the original document; but this cannot be said of the amendments, particularly the Fourteenth Amendment, with its "due process of law" and other technical phrases.

[3] The National Municipal League's *Model Charter* (new edition, 1922) is the best among these compilations. It can be had on application to the League's headquarters (261 Broadway, New York).

Importance of the Charter.

A clear, workable, and adequate charter is an essential of good city government. Not all municipal misgovernment is due to bad charters, of course, but the cumbrous municipal machinery which many antiquated charters still impose upon American cities is responsible for no inconsiderable portion of it. On the other hand it is futile to expect that a new city charter, no matter how enlightened its provisions, will prove to be an automatic dispenser of civic righteousness. American cities have tried and are still trying a great variety of charters. They seem to be obsessed with the belief that there is some form of legislative alchemy by which municipal darkness can be turned into light. That is why the process of charter-tinkering goes on continually.

REFERENCES

Most of the references appended to Chapter VIII contain material relating to city charters. Mention may be made of some additional books such as H. G. James, *Applied City Government* (New York, 1914), Nathan Matthews, *Municipal Charters* (Cambridge, 1914), the National Municipal League's *New Municipal Program* (New York, 1919); William Anderson, *City Charter-Making in Minnesota* (Minneapolis, 1922), and R. T. Crane, *Loose Leaf Digest of City Manager Charters*, published by the National Municipal League (New York, 1922). See also the references at the close of Chapters XX-XXI.

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[1] In some states, moreover, there are state boards and commissions which have no counterpart in other jurisdictions. This renders it impossible, for example, to frame uniform provisions for the regulation of public utilities. The tendency has been to bring public service companies (street railways, gas, electric lighting and telephone companies) entirely under state control; but in many cities the municipal authorities still retain a considerable amount of regulating authority over them. See Vol. II, Chap. XLI.

CHAPTER X

THE CITY AS A MUNICIPAL CORPORATION

Municipal Corporations Defined.

Cities are everywhere known as municipal corporations. The writings of jurists abound in definitions of this term, some of them long and metaphysical. It will be enough to say that both in Europe and America a municipal corporation is a subordinate body politic established by authority of law, its existence evidenced by a general or special charter, with a corporate name, with defined limits and a population, and with delegated powers of local government.[1] It is created by law, and depends for its existence as well as for its powers upon the state or nation.

Their Essential Features.

The essentials of a municipal corporation may, therefore, be set down as follows: (*a*) an incorporation evidenced by a charter conveying corporate powers, (*b*) a corporate name in which all its acts are done, such acts being authenticated by the use of a corporate seal, (*c*) a body of inhabitants exercising the corporate powers, either directly or through official agents, and (*d*) an area of territory within which the corporate functions are exercised.

The Doctrine of Inherent Powers.

The doctrine that municipal corporations have rights of local self-government which are inherent, and not derived from charters or laws, has been advanced at times by writers and has occasionally found endorsement in the dicta of American courts.[2] The argument, as it is usually put forward, may be summarized in this way: "All corporations have certain powers at common law, to wit, the right to sue and be sued, to have a seal, to make by-laws, and so forth. The city is a corporation, a municipal corporation, and as such possesses the same rights as any other corporation." But although it may be true that some municipal powers are of common law origin, this does not mean that they are beyond the reach of legislative interference. The common law is subject to change at any time by statute. Nor is much weight to be attached to the further argument that "since cities were in existence and exercised powers before the states were established, the right of local government is an immemorial and absolute right which the state cannot take away." The great weight of judicial authority has been thrown against any such doctrine, and it is now well established that save as they may be protected by constitutional guarantees the cities of the United States have no immunity from legislative interference. They have no rights which are beyond the control of constitutions and laws. The supremacy of the legislature (in the absence of constitutional limitations upon its freedom) applies to municipal corporations as to all other corporations.[1]

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[1] For various other definitions, see Eugene McQuillin, *Treatise on the Law of Municipal Corporations* (6 vols., Chicago, 1911-1912), Vol. I, pp. 254-256.

[2] See Amasa M. Eaton, *The Origin of Municipal Incorporation* (New York, 1902), *passim;* also his "Right of Local Self Government" in *Harvard Law Review*, Vol. XIII, pp. 441-454, 570-588, 638-658; XIV, pp. 20-38, 116-138; and Eugene McQuillin, *Treatise on the Law of Municipal Corporations*, Vol. I, Secs. 54, 69, 70, 107, 164, 167, 169, and especially 246. For the contrary view see H. L. McBain, *The Law and Practice of Municipal Home Rule* (New York, 1916), pp. 14-16.

The City is the Creature of the State.

The Interpretation of City Charters:

1. In Europe.

In the countries of Continental Europe, as already pointed out, the practice has been to bestow upon the local communities a broad and practically uniform grant of powers. There is no piecemeal enumeration of the fields of authority which a French or German city may occupy. The presumption is always in favor of municipal jurisdiction; the central authorities have no right to participate in local government save where such right has been expressly conferred upon them by law. The administrative courts of these countries, moreover, in controversies concerning the apportionment of power between central and local government, have almost invariably given the cities the benefit of the doubt. They presume that the municipalities have the right to exercise any asserted power until the contrary is shown.[2] The city does not bear the burden of proof that it possesses any authority in matters of local scope; the onus is on the central authorities. In connection with its own affairs the city may do whatever it has not been forbidden to do; the central authorities, if they claim jurisdiction to interfere in matters of local administration, must prove beyond peradventure that the law has given it to them.

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[1] Meriwether *v.* Garrett, 102 *U.S.* 472.

[2] Questions of jurisdiction between the central and municipal authorities in Germany, France and other Continental countries do not involve long and expensive litigation in the regular courts, but are determined promptly and inexpensively by the administrative tribunals. In Germany these tribunals were often thought too favorable to the central authorities in matters affecting police jurisdiction. See above, p. 163.

2. In the United States.

In the United States this situation is absolutely reversed. The almost universal American practice has been to bestow a list of enumerated powers upon designated city authorities, not upon the city itself, and the courts have required strict adhesion to the express or implied terms of this enumeration. The general rule applied by the courts to the interpretation of American city charters, as stated by the most authoritative writer on this subject is as follows:

Judge Dillon's Summary of the Matter.

> "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation —not simply convenient but indispensable. Any fair, reasonable, substantial doubt concerning the existence of a power is resolved by the courts against the corporation, and the power is denied."[1]

It is on this doctrine that the legal position of the American city is founded. There is, of course, opportunity for the exercise of a little latitude in the application of the rule as stated. Some courts may be more lenient than others in determining what is "fairly implied" by the provisions of a city charter, or what is "essential to the accomplishment of the declared objects and purposes of the corporation"; but at best the presumption is against the city, which is in contrast with the established practice in Continental Europe.[2]

A Comment on This Difference of Interpretation.

Somewhat surprising it is that this should be the case, because central supervision of municipal government has been commonly deemed to be more rigid in Continental Europe than in the United States. But this is only because the central supervision is administrative, not legislative in character—the two are very different things. A system of administrative centralization catches the eye more readily because it gives employment to a large number of officials; but it is not necessarily more restrictive in its scope or operations. Legislative centralization is less flexible and for that reason is apt to bear more heavily upon the local communities. A government of laws may be more impartial than a government of men but it is also far more unbending. The extreme inflexibility of the state's control over American cities, in fact as in theory, has not been fully appreciated by students of comparative government.[1]

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[1] John F. Dillon, *Commentaries on the Law of Municipal Corporations* (5th edition, 5 vols., Boston, 1911), Vol. I, Sec. 237.

[2] In England the theory and the practice of the law occupy a midway position. Some powers are granted in general terms but many others are obtained by the cities individually (see p. 164). The attitude of the English courts has not been inclined strongly toward one side or the other.

The Different Rules of Interpretation in the Different Spheres of Government.

There is an element of inconsistency in the general rules which American courts have applied in relation to grants of power from the state to the nation on the one hand, and from the states to the cities on the other. The constitution of the United States is a grant of enumerated powers to the national government, and it specifically provides that "the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." [2] Seventeen clauses granting express powers to Congress are placed in the body of the document; an eighteenth clause provides that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or office thereof." [3] In other words, the national government was given no broad grant of authority to deal with national affairs; it was endowed with a strict enumeration of specific powers and with the means of carrying these enumerated powers into effect. But the courts, as is well known, have construed these enumerated powers with great generosity. They have applied to the enumerated constitutional powers of Congress the rule of broad construction and have by that process enormously

The Broad Construction of Powers Granted to the Nation.

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[1] The legislative power of the state is always and everywhere supreme over the municipalities. There is no limit to what the constitution-making authority of the legislature *may do* in relation to local government either here or abroad. But there is a great difference in what the central legislature *is in the habit of doing.* The practice of legislative tutelage exists in America; it does not in Continental Europe.

[2] Amendment XI.

[3] Article I, Section 8.

widened the area of federal jurisdiction.[1] They have spelled out of simple words and phrases a measure of authority which the framers of the national constitution could never have intended to bestow upon the central government. By so doing the courts have performed a great service to the orderly evolution of American government; they have put into the organic law of the nation a dynamic quality without which it would long since have ceased to harmonize with the needs of a growing country.

The Strict Construction of Powers Granted to the Cities.

But with reference to the enumerated powers conferred by the several states on their own cities the courts have pursued an entirely different policy. Here they have shown no partiality for rules of broad construction. Their inclination, on the contrary, has been to look upon the city as a corporate rather than a governmental unit, and to apply the strict rules of interpretation which govern the charters of ordinary corporations.[2] And if we assume that the status and functions of a municipal corporation are more akin to those of a private corporation than to those of the national government (which is not an unreasonable assumption) this reluctant attitude of the courts has been entirely correct. For the principle of strict construction, as Judge Dillon has pointed out, is fairly derived from the nature of private corporations.[3] In the exercise of corporate powers the act and will of the majority are the act and will of the whole. The minority may be bound to onerous duties and services, even to an impairment of their property, by act of the majority.[1] There is no effective protection for the minority save in the terms and interpretation of the corporate charter, and there would be no protection here if corporations were given a loose rein in the exercise of their powers.

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[1] For example, the Supreme Court has held that the power "to regulate commerce with foreign nations," given to Congress by the national constitution, includes the power to *prohibit* such commerce. Congress did, for a time, prohibit commerce with Europe by the Non-Intercourse Act. But the state courts have usually held that the power to regulate, when conferred upon a municipal council by the city charter, does not include the power to prohibit. The Supreme Court of New Jersey, for example, held that the power to regulate the driving of horned cattle through the city streets did not confer the right to forbid their being driven through the streets at all. McConville *v.* Jersey City, 39 *New Jersey*, 38.

[2] This tendency did not manifest itself so clearly during the first half of the nineteenth century. During that period there were a good many instances in which the courts took a very liberal attitude toward the interpretation of specific powers granted to the cities. H. L. McBain, *American City Progress and the Law* (New York, 1919), pp. 34-36. The change in attitude was due in part, it is believed, to the gross abuse of charter powers which took place in many cities during the mid-century era, and showed itself particularly in the practice of loaning their credit to private enterprises, subscribing for stock in railroads, and so on.

[3] *Law of Municipal Corporations*, Vol. I, pp. 448-449.

The Interpretation of Corporate and Municipal Charters Compared.

It is a general rule of legal interpretation, therefore, that the authority of a private corporation does not extend to indefinite and unspecified objects but must be restrained within the express and necessarily implied powers conferred by its charter. And any ambiguity or doubt arising out of the terms of the grant is resolved against the corporation. The burden of proving that a power is *intra vires* rests on the corporation. The same rule is applied, though not with equal vigor, to the powers of municipal corporations. A disposition to be generous has sometimes been shown in the judicial interpretation of these charter provisions which relate to the organization of city government and to the routine work of the ordinary municipal departments. This, as Judge Cooley once observed, is a proper concession. "Municipalities are to take nothing from the general sovereignty except what is expressly granted; but when a power is conferred which in its exercise concerns only the municipality, and can wrong or injure no one, there is not the slightest reason for any strict or literal construction with a view to narrowing its construction." But with respect to those powers which are "out of the usual range," such as the power to grant perpetual franchises, or to fix prices, or to engage in any form of profit-making trade—in such matters the courts have applied with fairly consistent severity the rule of strict construction. They will not concede that a city possesses such powers unless the charter is reasonably clear on the point.[2]

When, however, a grant of power has been expressly made to a municipal corporation, the manner of exercising this authority

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[1] For example, when money is borrowed on the credit of the corporation by the issue of bonds which become a first lien on all the corporate property, that is, upon the property of the shareholders.

[2] Port Huron *v.* McCall, 46 *Michigan*, 565. There are indications in some of the more recent cases, however, that even in these matters the rigor of the rule is being gradually softened; but it is not to be expected that the courts will even adopt a rule of broad construction similar to that used in interpreting the enumerated powers granted by the constitution to the national government. See H. L. McBain, *American City Progress and the Law* (New York, 1919), 57.

The Manner of Exercising Municipal Powers.

is for the municipal authorities to determine and within reasonable bounds will not be questioned, provided, of course, that no particular method has been prescribed by the legislature. It has been held, for example, that the power to construct or to acquire street railways carries the right to construct or acquire a subway. Having a substantive power the city authorities are permitted to use their discretion in exercising it under the street rather than upon its surface if they so desire. Power to build and maintain a market, it has been decided, carries with it the right to lease the vacant space upstairs for non-market purposes.[1] On the other hand it has been held that the power of a city to pave its streets does not imply the right to engage in the manufacture of bricks to be used for street paving.[2] And the power to "provide for lighting the streets" does not include the right to sell gas or electricity for private lighting.[3] The line between what is implied and what is not implied in an express power is hard to draw; and so are the bounds of a city's discretion when the express grant of a power is conceded.

The Difficulty of Classifying the Powers of a Municipal Corporation.

Since it is the American custom to bestow municipal powers in enumerated form and not by a broad grant, the task of classifying these powers in a way which will cover the cities of the country as a whole is not an easy one. Powers which are given to one city are sometimes denied to another and for no assigned reason. Powers, moreover, are very often conferred upon a designated municipal board or official and not upon the municipal corporation as such. The practice of giving powers seriatim, of constantly enlarging the authority of one municipal board or official and limiting that of another, has resulted in a prodigious outpouring of special legislation. No one knows the exact range of the powers which appertain at a given moment to any particular city, unless it be the head of the city's law department, and even he cannot always be sure of his ground. The mayor, the manager, the commissioners, or the councilmen are perpetually calling upon him for legal opinions; what he gives them in response to their appeals is often no more than a guess or a surmise. The courts are continually proving by their decisions that even the heads of city law departments do not know what powers the municipality possesses. How, then, can laymen be expected to know them? The legal powers of the American city defy accurate classification; the best anyone can do is to present a very general survey of their scope and nature.

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[1] Spaulding *v.* Lowell, 23 *Pickering* (*Mass.*), 71.

[2] Attorney-General *v.* Detroit, 150 *Michigan*, 310.

[3] Spaulding *v.* Peabody, 153 *Massachusetts*, 129.

General Powers of American Cities.

Throughout the United States the cities have, first of all, the customary powers of an incorporated entity,—the right to sue and be sued, to hold property, to have perpetual succession or legal immortality, and to have a corporate seal. All municipal corporations have been given power to raise revenue by taxation, but always with certain limitations as to what may be taxed and how. A common stipulation is that taxes shall be "proportional," or levied at a uniform rate. Nearly all American municipalities, moreover, have been granted authority to borrow money on the city's credit; but here again the right is closely circumscribed, usually by the fixing of a debt limit. Very often there are detailed restrictions as to the methods of borrowing, the terms for which loans may run, the form of bonds to be issued, the rate of interest to be paid, and the methods of providing for the repayment of the loan.[1] Cities have the right to acquire property for public use, to hold property, to lease it, and to dispose of it by sale. But the manner of acquisition and sale is commonly prescribed in detail. The police power, so called, which includes the right to frame and enforce reasonable measures for the protection of health, life, property, and morals, is also given by express grant or by implication to municipal corporations everywhere. The scope of this "police power" is impossible to define with any degree of precision; the courts have studiously refrained from setting specific boundaries to it, and its lines of demarcation are being steadily extended. Today, for example, it may be correct to say that the police power does not include the right to prohibit the erection of billboards on private property in residential sections of the city; but tomorrow the "police power" may be broadened to warrant this exercise of the city's protective authority, for the tendency is to extend it to matters affecting the convenience and comfort of the citizens as well as to those which have to do with their safety, health and morals.

In varying degree, again, whether by specific grant or by the

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[1] See Vol. II, Chap. XLIV.

Specific Powers of American Cities.

exercise of their police power, the cities have been given power to lay out and construct streets and bridges, to assess the whole or a part of the cost upon neighboring property, to provide police and fire protection, to maintain parks and other places of recreation, to provide and maintain systems of water supply, to build sewers, to collect and utilize garbage and refuse, to grant franchises, to maintain facilities for poor relief and correction, to regulate buildings, to license certain trades and occupations, to provide schools of various sorts, to establish and maintain public libraries, to provide opportunities for public recreation—and so on. Finally, and in addition to all such powers, the municipal corporation has the right to exercise any such authority as is indispensable to the accomplishment of the purposes for which it was created. For example, it may create a new municipal office, not mentioned in its charter and not connected with any of its expressly enumerated functions, if the creation of such office is essential to the declared object for which the municipal corporation exists. In none of these things, however, is the range of the city's authority or discretion unlimited; restrictions have in some cases been established by statute and in others by the process of judicial interpretation. The very same words, by reason of these differing interpretations, may convey wider powers to the municipal authorities of one state than to those of another.[1]

Mandatory and Permissive Powers.

Powers, when given to a municipal corporation, may be either mandatory or permissive in form; in other words, powers that "must" or "may" be exercised. The practice of giving permissive powers to cities is not common in the countries of Continental Europe, for the obvious reason that broad grants of authority usually take care of contingencies which may arise in any or all cities. In England, as has been mentioned, Parliament enacts from time to time "adoptive" acts which permit cities, if they choose, to assume new authority. The borough council decides whether the provisions of an adoptive act shall be accepted. In the United States the practice of enacting optional or permissive legislation for cities is relatively new and not yet widespread; but it has been growing in recent years. As a rule the mayor, or the city council, or both, have the power to decide whether the permissive legislation shall be utilized; but at times the question is directly submitted to a popular vote.

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[1] See Eugene McQuillin, *Treatise on the Law of Municipal Corporations* (6 vols., Chicago, 1911-1912), Vol. I, pp. 784-785.

The Interpretation of Powers Which Are Permissive in Form.

Whether a power entrusted to a municipal corporation is imperative or discretionary depends upon the intent of those who granted it; but the intent is not always made clear by the words. It occasionally happens, therefore, that a grant which is permissive in appearance turns out to be mandatory in effect. It has often been ruled by the courts, for example, that where a municipal corporation is empowered to do something which the public good requires to be done, the exercise of such power is compulsory. In such cases the word *may* becomes *shall.* To determine whether a power is permissive one must regard not only the wording but the nature of the power, and the rights of individuals with respect to its exercise or non-exercise.[1] It also happens at times, though more rarely, that a power which is expressed in mandatory words becomes discretionary in application.[2] But all this is exceptional. In most statutes conveying municipal powers the verbs are clear enough, and mean what they say.

The Practice of Conferring Powers on Designated City Officials.

It has been pointed out that in European countries (including Great Britain) powers are almost invariably granted to the municipal corporation as such. In the United States this is not the case. Here, more often, they are conferred upon the mayor, or the city council, or the mayor and council acting jointly, or upon some designated administrative board or office. On occasions, of course, power is granted to the American municipal corporation as such; but even when this is done the channel through which the power may be exercised is usually designated.

Delegation of Powers Is Not Permitted.

But whether the power is given to the city, or to the "corporate authorities," or to the mayor and council, it must be exercised as specified and cannot be delegated. Powers given to public officers are in the nature of public trusts, to be exercised for the benefit of the community and not for the delectation of the officers concerned. When the veto power is given to the mayor, for example, it cannot be delegated by him to some other official. If the power to fix the tax-rate is given to the city council, this authority may not be devolved upon the assessors or any other body. If the charter provides that the city council shall designate the names of streets, it is not allowable to surrender this function to the board of street commissioners or the superintendent of streets. The discretion which a power confers can no more be bargained away than the power itself. *Delegatus non potest delegare.*

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[1] For an example, see Phelps *v.* Hawley, 52 *New York*, 23, 27.

[2] For an example, see Merrill *v.* Shaw, 5 *Minnesota*, 148.

But Administrative Discretion May Be Delegated.

But this does not mean that every detail relating to the exercise of a power must be handled and determined by the officers possessing it. A distinction is made between the exercise of the power itself and the performance of the ministerial duties connected with it. Thus a city council, if it is empowered to grant lighting franchises, may create committees to gather information, to hold hearings, and even to make recommendations—but the actual granting of the franchise must be the act of the council itself. If the council is empowered "to issue, negotiate, and sell bonds" it may nevertheless authorize the city treasurer to prepare the bonds, to advertise them for sale, to receive bids, and to submit recommendations as to which bid is the best. If the city council has power to make contracts, it may authorize the mayor or any other city official to fix the terms and even to sign the document on the city's behalf—provided the council formally ratifies the act of its agent. If the council is vested with the authority to construct and maintain sewers it may delegate to the city engineer, for example, the function of determining how deep the sewers shall be laid or what the grade of the conduits shall be. These are all examples of ministerial functions—matters of detail which are merely incidental to the exercise of substantive powers. The line between substantive powers and ministerial functions cannot be indicated in general terms; the facts in each particular case are controlling. The basic principle, however, is reasonably clear, namely, that the *essence* of power may not be delegated. Mayors, councils, boards and officers must retain control of such discretion as is given to them; they must not surrender it to any subordinate authority.

The Way in Which Municipal Powers Are Exercised:

The Ordinances.

The inhabitants of a city, constituting the municipal corporation, may exercise their legislative powers either directly through the use of the initiative and referendum where these agencies of lawmaking have been established, or indirectly through the action of their representatives. In either case they do it by the enactment of ordinances. Ordinances are laws of a municipal corporation, enacted by the inhabitants or their representatives, prescribing general rules in relation to the affairs of the municipality.[1] Direct ordinance-making is exceptional.[2] The process, as will be described later, is by popular petition and a ratifying popular vote. Ordinances, as a rule, are enacted through representative channels—by the city council with the approval of the mayor, or by the city commission in municipalities under the commission form of government, or by the council alone in cities which operate under the city manager plan.

Scope of the Ordinance-Making Power.

The ordinance-making power of the city is co-extensive with the authority conferred upon the municipal corporation by its charter or by the laws of the state. It includes, speaking broadly, the right to provide regulations covering such matters as fire prevention, street traffic, buildings and housing, public health, and, in general, the things which concern the police power of the municipality. It is by ordinance that the various city departments are sometimes organized, and the duties of the various officers defined.[3] It is by ordinance that the municipal tax rate is fixed, the appropriations made, and loans authorized. Some ordinances are general in scope and virtually establish a local code covering some particular phase of municipal administration (the code of building regulations, for example, or the zoning ordinance), and these general ordinances are of a relatively permanent character. Others are special in scope and temporary in duration, such as an ordinance authorizing the widening of a single street.[1] A city ordinance usually begins with these words: "Be it enacted by the municipal council of the City of ——— and by authority of the same, as follows:" From time to time all the ordinances of a city are revised and compiled into a single volume with the repealed material omitted.

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[1] For other definitions see Eugene McQuillin, *The Law of Municipal Ordinances* (Chicago, 1904), p. 2, and John F. Dillon, *The Law of Municipal Corporations*, II, 892. The distinction between laws and ordinances in the United States today is this: Laws are enacted by Congress or by the legislature of the state, ordinances by the legislative authorities of the city. There is no difference in their binding force. Ordinances have the force of laws and are similarly applied by the courts. The old distinction between laws and ordinances, as it existed in England, was quite otherwise. A law was an enactment made by Parliament with the approval of the king; an ordinance was decree of either the king or Parliament acting alone. In France today an ordinance differs from a law in that it is issued by some executive authority. Only in the United States does one find the term ordinance used for municipal enactments. In England and in the British colonies (as well as in American towns and villages) the term "by-law" is used.

[2] It does not exist in the cities of France or Great Britain, or in most cities of the United States. For the methods of direct ordinance-making in American cities, see Chap. XVIII.

[3] Not always, however, for the administrative organization is sometimes prescribed by the provisions of the city charter. (See Vol. II, Chap. XXIII.)

Rules Governing the Making of Ordinances:

1. Ordinances Must Be Within the Scope of the Council's Powers.

The power of a municipal council or commission, with respect to the making of ordinances, is subject to various limitations. The nature and scope of these limitations afford a field for rather voluminous discussion; but it will suffice to state the more important of them as follows:

And Must Not Conflict With the General Laws.

First. Ordinances must be within the competence of the city authorities as fixed by the charter and the laws. They must not be beyond the scope of the city's express or implied powers. Nor may they be in any other respect inconsistent with the city charter or with the laws of the state. If a municipal ordinance is in conflict with a statute, the statute prevails. The validity of any municipal ordinance may be attacked in the courts on the ground that it is beyond the scope of the council's authority or in conflict with the general laws, and such attacks are very common as every lawyer knows. Flaws of one sort or another are usually to be found in city ordinances when one looks for them. This is because they are often hastily drawn, and are sometimes enacted by municipal councils without consulting the city's law department. Even when this department is consulted, moreover, the advice which it gives is not always to be relied upon. The function of safely piloting the municipal authorities through the maze of constitutional provisions, general and special statutes, charter amendments, and judicial decisions is a task requiring legal skill of a high order, far higher than the average city manages to secure in its law department. In many cities the position of the city attorney or city solicitor, despite its high importance, is regularly given as a reward for partisan service to someone whose activity in local politics is much more extensive than his knowledge of the law. Any member of the legal fraternity, howsoever diminutive in professional stature, is accounted fit for the job.

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[1] Ordinances should be distinguished from *regulations*, which are rules made by some administrative authority such as the board of health, the fire commissioner, or the water board and relate to detailed matters within their respective departments. These have, in general, the same force as ordinances. Both ordinances and regulations should also be distinguished from resolutions or orders of the city council or any other municipal authority. Resolutions are not subject to the formalities and limitations of ordinances (see pp. 211-213) and do not have the force of law. Orders are passed by the city council on any matter relating to its own procedure, or (in Europe) are issued by some executive authority in connection with the exercise of purely ministerial functions. The legislative powers of a city council must be exercised by ordinance, not by resolution or by order.

2. Ordinances Must Be Passed in Compliance With Certain Formalities.

Second. Ordinances must be enacted in accordance with the prescribed formalities. These, as laid down in the charter or in the laws, often require that the ordinance shall be published a stated number of times in one or more local newspapers before its final enactment. In the case of ordinances enacted by the use of the initiative and referendum there are many strict regulations to be observed in verifying the signatures on petitions, in calling the election, and in placing the question on the ballot. When ordinances are enacted by the city council it is usually required that they shall be formally introduced by some member, given three readings, passed by a majority vote with at least a quorum of the members present, and (in mayor-and-council cities) submitted to the mayor for approval. In some cities there is a rule that not more than one subject may be included within a single ordinance; for example, the same ordinance may not contain provisions relating to street traffic and to the sale of property for taxes. The courts will not usually hold an ordinance invalid by reason of some slight departure from the prescribed formalities; but they require, and rightly so, that a reasonable deference be paid to the established procedure. They are especially insistent upon this where the rules have been established in order to safeguard the rights of individuals.

3. Ordinances Must Not Be Arbitrary or Unreasonable in Their Provisions.

Third. Ordinances must not be arbitrary or unreasonable in their provisions; but they are always presumed to be fair and reasonable until the contrary is proved. The burden of proving unreasonableness is upon him who asserts it. There is no single test by which a court can decide what is reasonable and what is not; the determination can only be made by a scrutiny of the ordinance in question, or by a study of some specific situation to which its provisions are being applied. But so many ordinances have been successfully or unsuccessfully attacked on the ground of unreasonableness that the courts now possess a large body of precedents for their guidance. Ordinances are void if they are clearly oppressive in character; if, for example, they interfere with personal liberty to an extent beyond what is essential to accomplish the main purpose of the ordinance. It often happens, however, that an ordinance is reasonable as applied to one set of circumstances and unreasonable when applied to another, or reasonable at one season of the year and not at another.[1]

If an ordinance is passed by virtue of a special grant of power made to the city by the legislature, and is in accord with the terms of the grant, the courts will usually uphold its reasonableness even though they would not do so under ordinary circumstances. Questions of reasonableness, in determining the validity of city ordinances, are mixed questions of law and fact. As such they are decided by the judge and not, save in exceptional cases, by the jury.

4. Ordinances Must Not Make Unwarranted Discriminations.

Fourth. Ordinances must not be discriminatory. If they confer privileges they must throw these privileges open to all who comply with the conditions. The provisions of an ordinance must apply equally to all persons in the same category. For example, it would not be a discrimination to provide that all restaurants shall be closed on Sundays while hotel dining rooms are permitted to remain open; but to stipulate that Chinese restaurants shall remain closed while other restaurants are privileged to remain open would be a clear case of discrimination. An ordinance must not single out races or groups or corporations or individuals for special privilege or restriction; it must not favor residents as against non-residents, or native-born as against naturalized citizens. It must bear with an equal hand upon all persons who stand in similar circumstances. But an ordinance is not discriminatory because its restrictions happen, in the natural order of things, to fall upon single groups or individuals, they being the only ones engaged in a particular sort of business or affected by a particular set of circumstances.[1] All this may look simple enough on paper, but the sinuous line between discrimination and non-discrimination is very elusive and the courts have not ventured to frame any general rule by which it can be easily recognized.

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[1] For example, an ordinance requiring that all dogs be chained indoors might be held reasonable during an epidemic of rabies but unreasonable under other circumstances. An ordinance requiring property owners to sprinkle salt on the sidewalks might be held reasonable in winter, but hardly so in summer. To provide that no openings shall be made in the street pavements at any time would be unreasonable; but it is allowable to prohibit this work during the winter months when it would be difficult to re-lay the pavements properly. An ordinance excluding motor trucks from certain streets is reasonable; but an ordinance excluding them from all streets would be held void.

5. Ordinances Must Not Unduly Restrain Trade.

Fifth. Ordinances must not unduly restrain trade. It is a rule of the common law that the by-laws of a private corporation are void if their effect is to procure an *unreasonable* restraint of trade. The same rule applies to municipal corporations. It is entirely allowable by ordinance to create a monopoly if the public good so requires, as, for example, in the case of a garbage-removal company. But the city council cannot by ordinance grant an exclusive franchise to any public service corporation unless it has been given, by statute, the express power to do so. It cannot, to take another example, provide that only certain contractors shall have the right to compete for the construction of public works, or that only designated firms shall have the right to sell ordinary merchandise. Within the limits of their police power the city authorities may require certain forms of business to be licensed and may exact reasonable fees for the granting of such licenses; but it cannot use its licensing power as a means of prohibition.

The Interpretation of Ordinances.

The rules of interpretation relating to ordinances are substantially the same as those applied to laws. When the meaning of the words is not clear the courts will construe them in accordance with what appears to have been the intention of those who enacted the ordinance. This intention is gleaned from a study of the whole ordinance or by examining the situation which led to its passage. Words and phrases will be construed in their ordinary sense unless such construction makes the context unintelligible. As between two possible interpretations of a provision, one reasonable and the other arbitrary, the courts will always choose the former. They will exhaust every effort to discover, from the phraseology and the facts, the intent of the council which passed the ordinance. But there is one channel of evidence which the courts will not explore: they will not summon the members of the council and enquire what the ordinance-makers had in mind. That might seem to be the quickest and surest method of determining what a provision was intended to mean; but if any such practice were to be adopted the courts would soon find themselves in a maze of inconsistencies and contradictions. To depend upon the memories of city councilmen for the interpretation of ordinances would be a certain way of producing legal pandemonium.

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[1] Soon Hing *v.* Crowley, 113 *U.S.* 703.

The Life of a Municipal Corporation.

Municipal corporations are not created for a term of years but in perpetuity. Their existence is not terminated nor is their identity affected by an enlargement or restriction in territory, by an increase or a decrease in the number of inhabitants, by any change in name, or by amendments to their charters. The repeal of an old charter and the substitution of a new one does not dissolve a municipal corporation. But where the entire territory of a municipal corporation is annexed or consolidated, the corporation is absorbed with the territory. Likewise the repeal of a city charter by the legislature, without substituting another charter, brings the life of a municipal corporation to an end. But the courts will never credit the legislature with an intention to repeal without substitution unless this intent is clear.

How Municipal Corporations Are Dissolved.

A municipal corporation can be dissolved by authority of the state, and by such authority only. This involves action by the state legislature, or by the courts acting under authority given to them by statute.[1] In some states the power of the legislature to dissolve, as well as to create, municipal corporations is subject to constitutional restrictions. The inhabitants of a city cannot by any act of their own dissolve the municipal corporation and divest it of its responsibilities.[2] Nor is the corporation dissolved by the mere failure to exercise its functions over a term of years. Even the non-election or non-appointment of all municipal officers does not entail dissolution, for the continuance of corporate powers does not depend upon their constant exercise. The inhabitants, not the officers, constitute the corporation. Were all the inhabitants to disappear, the municipal corporation would necessarily come to an end; but that rarely happens.

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[1] In the United States the courts have no inherent power to declare the abrogation of a city charter; but such power is customarily given to them by statutes which define the procedure to be followed. The usual procedure is by writ of *quo warranto*. The petition for such a writ, if presented by individuals, ordinarily requires the approval of the Attorney-General or some other state officer.

[2] In some states, however, the general laws provide that the inhabitants may dissolve the municipal corporation by complying with certain conditions which usually involve a popular vote.

REFERENCES

The chief principles of public law relating to municipal corporations in the countries of Continental Europe may be conveniently found in F. J. Goodnow, *Comparative Administrative Law* (2 vols., New York, 1903), and more fully in such works as Hue de Grais *Handbuch der Verfassung und Verwaltung* (22d edition, Berlin, 1914); C. Bornhak, *Preussisches Staatsrecht* (2d edition, Freiburg, 1911), and Léon Morgand, *La loi municipale* (8th edition, 2 vols., Paris, 1911).

The rules of law relating to municipal corporations in England may be studied in R. J. Arnold, *The Law Relating to Municipal Corporations in England and Wales* (6th edition, London, 1910). The standard works on American municipal corporations are John F. Dillon, *Law of Municipal Corporations* (5th edition, 5 vols., Boston, 1911); Eugene McQuillin, *Law of Municipal Corporations* (6 vols., Chicago, 1911-1912, Supplementary vols., 7-8, Chicago, 1921); H. S. Abbott, *Treatise on the Law of Municipal Corporations* (3 vols., St. Paul, 1905-1906), and R. W. Cooley, *Handbook of the Law of Municipal Corporations* (St. Paul, 1914). For classroom use W. M. Lile, *Notes on Municipal Corporations* (3d edition, University, Va., 1922), is worth mention.

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CHAPTER XI

MUNICIPAL RIGHTS AND LIABILITIES AT LAW

The Constitutional Protection of Property—Does It Extend to the City?

It is a rule of law in the United States that the property of a private corporation, like that of an individual, is inviolable. It must not be taken for public use without just compensation. The individual or corporate owner cannot be deprived of it except by due process of law. Now municipal corporations are also property owners. They are empowered to acquire and hold property. Are they protected in such ownership to the same extent as private corporations?

Municipal Property Cannot Be Exempted from State Interference.

In their attempt to answer this question the courts have encountered a rather serious difficulty. The city, as has been shown, is a creature of the state, and altogether subordinate to it. The government of the city is, in effect, a branch of the state government. As such it can scarcely be permitted to acquire, hold, and alienate property free from state control and regulation. Can it be seriously contended, for example, that the streets of the city are the inviolable property of the municipal corporation, to be opened or closed to general traffic at the pleasure of the local authorities? Should it be within the power of the city to grant or deny street-crossing rights to steam railroads, telegraph companies, and other public service which serve the interests of the entire state? All city property is held for a public use; therein it occupies a different status from the property of private corporations and individuals. The courts have not been ready, therefore, to place the municipal corporation on the same plane as a private corporation as respects the inviolability of its property.

Nor Yet Can It Be Subjected to Such Interference Without Restriction.

On the other hand it is equally difficult to maintain that all municipal property, of whatever sort, is outside the bulwarks of constitutional protection and hence subject to unlimited encroachment at the hands of the state. If a city, from the proceeds of its own taxes, acquires a shore frontage and builds wharves, or if it acquires a lighting plant and derives a profit therefrom, should the state be at liberty to deprive the municipality of this property without compensation? Many cities possess land and other forms of property which are held for future sale and are entirely unconnected with the ordinary functions of municipal government. Should this property be accorded the same security and protection that is extended to other private rights, or ought it to be unrestrictedly subject to any action that the state legislature may take concerning it?

The Legal Distinction Between Two Classes of Municipal Property.

To settle this question justly the courts have endeavored to draw a distinction between two classes of municipal property, public and private. The point was clearly stated, thirty years ago, in a decision which is frequently quoted: "Over property which a city or town has acquired and holds exclusively for purposes deemed strictly public . . . the legislature may exercise a control to the extent of requiring the city or town, without receiving compensation therefor, to transfer such property to some other agency of the government. . . . By a general concurrence of opinion, however, this legislative power of control is not universal and does not extend to property acquired by a city or town for special purposes not deemed strictly and exclusively public and political, but in respect to which a city or town is deemed rather to have a right of private ownership of which it cannot be deprived against its will save by the right of eminent domain with payment of compensation. This distinction we deemed to be well founded, but no exact or full enumeration can be made of the kinds of property which will fall within it, because in different states different kinds of property may be held . . . with different duties and obligations, so that a kind of property might in one state be held strictly for public uses, while in another state it might not be."[1]

Difficulty of Maintaining This Distinction.

The last clause in the foregoing quotation was very wisely included, for the distinction between strictly public and quasi-private municipal property is easier to assert in principle than to apply in practice. Hence in trying to determine just what forms of property fall into one class, and what into another, the courts of different states have been far from reaching agreement. Streets, however, have been almost everywhere placed in the category of strictly public property held by the municipal corporation for the performance of duties devolved upon it by the state and hence subject to the paramount authority of the legislature.[1] The streets are for the public at large, not for the people of the city alone. In this respect there is no distinction between city streets and rural highways. The legislature is the dominant authority with respect to public rights in both; it may therefore grant franchises in the streets and highways irrespective of the local benefits to be derived therefrom.[2] Conversely the city has no power to grant franchises in the streets unless such authority has been conferred by the state.[3] The prevailing rule of law, therefore, places all roadways and streets in the category of "essentially public and not private municipal property."

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[1] Mount Hope Cemetery *v.* Boston, 158 *Massachusetts*, 509. In a recent case (City of Boston *v.* Treasurer and Receiver-General, 237 *Massachusetts*, 403) the Massachusetts Supreme Court held, however, that when the state took over the operation of certain subways which had been built by the city it did not thereby impair the proprietary rights of the municipal corporation.

Streets.

Parks.

As regards parks there is no clear predominance of legal authority. In some states it has been held that parks are not maintained for the sole use of the community in which they exist, "but for the general public which the legislature represents."[4] In other jurisdictions parks are declared to be held by the city "not in its public capacity but as a corporate individual having private rights of its own" and hence have been put in the category of private municipal property.[5] A similar divergence of judicial opinion exists with respect to wharves, bridges, and ferries. On the other hand the weight of authority classifies

Public Utilities.

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[1] As respects the rights of private property owners along the streets, this paramount authority is subject, of course, to the provisions of the national and state constitutions.

[2] Cheney *v.* Barker, 198 *Massachusetts*, 356, 364. This is in accord with the old legal traditions. In England, under the common law, the control of highways is vested in the crown; hence the expression "the king's highway."

[3] Because of the danger that the legislature may abuse its power to control the granting of franchises in city streets, the constitutions of some states have placed limits upon legislative discretion. The usual provision is that no such franchise shall be given without the consent of the municipal authorities. In many cases, moreover, the legislatures, in granting city charters, have expressly empowered the municipal authorities to award franchises.

[4] Hartford *v.* Maslen, 76 *Connecticut*, 599, 611.

[5] Detroit *v.* Park Commissioners, 44 *Michigan*, 602, 604.

waterworks, lighting plants and similar utilities, when owned by the city, as private municipal property.[1]

The Right of the State to Regulate Municipal Property.

Although holding certain classes of municipal property to be private in character, the courts have been reluctant to rule that such property is altogether immune from state regulation. They have frequently ruled that while the state may not take such property from the city without just compensation it may determine, at its discretion, the way in which the property shall be managed by the city, provided it does not compel in this way a diversion of the property from its regular use. The point is well stated in an Oregon decision: "Public parks, gas, water and sewerage in towns and cities may ordinarily be classed as private affairs, but they often become matters of public importance; and when the legislature determines that there is a public necessity for their use in a certain locality I do not think they can be designated as merely private affairs."[2] The legislature has therefore been permitted, in one instance, to take the management of the city's waterworks away from the regular municipal authorities and to vest this function into the hands of an incorporated water board appointed by the mayor.[3] This involved no diverting of the property to another use.

State Control of Municipal Funds.

As to funds which the city has obtained by taxation, these are public property and subject to such disposition as the legislature may direct. The city has no power to levy taxes for any purpose save as the legislature may confer such power: moneys obtained by the municipal corporation in the exercise of its taxing powers are not its own private property; and the state legislature may direct that they be applied to any public use even though they have been collected and appropriated for some other purpose. It may similarly direct the disposition of funds obtained by the city through loans. Whether the legislature can control the use of money obtained by the city from the operation of its water and lighting plants, or from licenses, or by gifts or bequests from private individuals, is not so clear. There have been relatively few decisions on this point. It would seem fairly arguable, however, that where any form of municipal property is held to be quasi-private in character, and hence exempt from legislative control, the income derived from such property should also be exempt.

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[1] See the cases cited in Eugene McQuillin, *Treatise on the Law of Municipal Corporations*, Vol. I, p. 504.

[2] David *v.* Portland, 14 *Oregon*, 98.

[3] Coyle *v.* McIntire, 7 *Houston* (*Delaware*), 44.

The City's Liability in Connection With Property.

The distinction between strictly public and quasi-private municipal property is also utilized in determining a city's liability for damages in suits which arise out of matters connected with city property. It is now pretty well settled that where the city owns and manages property from which it derives a revenue it must assume any liabilities which may arise in connection therewith. In the application of this rule the courts have held cities liable for damages to private individuals (where civic negligence has been shown) in the management of water-supply, gas works, markets, wharves and cemeteries.[1] The liability of the city in such cases is in nature and degree exactly like that of a private corporation. But where property is held for a strictly public or governmental purpose, with no revenue accruing from it, the general tendency has been to hold that the city has no liability, although the decisions are by no means uniform on this point.

Some Examples.

Thus when a city causes damage to private individuals by reason of its negligence in the construction or repair of the city hall, the schoolhouses, the police and fire stations, the hospital, or the public library it has not ordinarily been held liable. But the courts have not kept absolutely to this principle of granting immunity wherever the property in question is used for a strictly public or governmental purpose, and the present drift of their decisions is in the direction of extending municipal liability to all property, no matter what its character or use. Some difficulty has been encountered in finding a foundation upon which to base this extension of liability; but the courts seem to be growing more favorable to a doctrine which may be briefly stated as follows: It is a function and duty of every municipal corporation to maintain all its property, for whatever purpose used, in a safe condition. This function is not "strictly public or governmental" in the sense that it clothes the municipal corporation with immunity; it is a function of a private character easily distinguishable from the use, whether public or quasi-private, of the property itself.

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[1] See the cases cited in Edward F. White, *Treatise on the Law of Negligence of Municipal Corporations* (Indianapolis, 1920).

The City's Power to Make Contracts.

A municipal corporation has the right to make contracts on any matter within the scope of its powers. Its rights in this respect are substantially like those of a private corporation. But contracts to which the city is a party must be made in accordance with whatever procedure is laid down by the state laws, the city charter, or the municipal ordinances. A customary requirement is that all contracts involving more than a designated sum shall be signed by the mayor on the city's behalf; but the heads of departments are usually authorized to enter into contracts and bind the city in small matters such as the purchase of routine supplies. Occasionally a city charter stipulates that certain contracts of great importance, such as those which provide for public lighting or for the purchase of land, must be ratified by the city council before becoming effective. The power to make contracts includes by implication the power to do whatever may be needed to carry out the provisions of such contracts.

The Obligations of Municipal Contracts.

The city, like a private corporation, may acquire rights of a quasi-private or proprietary nature as the result of contracts made by it, and these rights are entitled to full constitutional protection against impairment. But if the contract has been entered into by the city in its capacity as the agent of the state and in the performance of a public duty, the legislature has control of whatever obligation there may be in favor of the city. It may even relieve the private individuals or private corporation from the necessity of fulfilling such obligation to the city, for example, the obligation to keep a highway or a bridge in repair.[1] On the other hand the city is liable for any obligations which it may incur in the exercise of its contract-making power. Where the city fails to carry out its part of the bargain it may be sued in the courts like any private corporation. It cannot, like the nation or the state, set up any claim to sovereign immunity. The city is incorporated *inter alia* in order to give it a status in the courts; in accepting such status it must take the liabilities as well as the rights. Even though the city, in making the contract, may be acting as the agent of the state rather than in a quasi-private capacity, the liability accrues all the same. The legislature cannot make contracts for the city without the latter's consent, and it must recognize the rights of individuals

The City's Liability in Connection With Its Contracts.

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[1] Springfield *v.* Springfield Ry. Co., 182 *Massachusetts*, 41.

and corporations arising out of contracts made by them with the city.

Election or Appointment to Public Office Does Not Establish a Contractual or Proprietary Relation.

It should be mentioned, however, that election or appointment to municipal office does not establish a contractual relation between the city and the appointee. Persons appointed to public office acquire no proprietary rights therein. There is no such thing as a vested right in any public office or in the emoluments or the authority thereof. When the city authorities, acting within their charter powers, abolish any office, thus ousting the incumbent before his term has expired, this action involves no deprivation of property and no impairment of a contractual obligation. The same holds true of ouster from office by decision of the courts or by the expedient known as the recall.[1] This is a sound doctrine. Public office is a public trust, not a private patrimony. It cannot be bought or sold (at least it ought not to be); it cannot be devised or bequeathed; it is not property in any sense of the term. On the other hand, if a municipal corporation makes a contract for specified services (with a consulting engineer, for example), a property right becomes established.

The Agents and Employees of the City.

The functions of a municipal corporation, like those of the nation and the states, must necessarily be performed by officials and employees—by agents, in other words. The functions of government cannot be performed by any species of inanimate mechanism; their performance requires the exercise of discretion, which automatons have not. Laws are not self-executing; their provisions must be applied by human hands. Without the handiwork of men in executive offices and in courts, the laws would be of no avail. So governments perform their functions through human agents, and, being human, these agents make mistakes, display negligence, commit malfeasance, and do on occasions all manner of damage to private property.

The Rule of *Respondeat Superior:* Does It Apply to Municipal Corporations?

Now it is a general rule of law that a private corporation is liable for such damages as may result from the acts of its authorized agents whenever these torts arise in the ordinary course of the agents' duties. The acts of the agent, when performed within the scope of his authority, bind the principal. This is commonly known as the doctrine of *respondeat superior*. Does this rule apply to the acts of public officials, who are the authorized agents of the nation, the state, and the city? Are governments liable for damages arising from the malfeasance or negligence of those whom they employ to perform the functions of government?

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[1] See below, p. 349.

The Practice in Continental Europe.

The countries and cities of Continental Europe assume full liability for any civil damages which may result from the torts of their officials in the ordinary course of duty. They do not take shelter behind the legal sophism that the nation or the state, being sovereign entities, can do no wrong, and therefore cannot be sued. They assume liability for all official acts of public officers, but require that the individual's claim to redress be established before the administrative courts in accordance with a special procedure and not before the ordinary civil tribunals.[1]

The Practice in England and America.

In England and America the legal situation is altogether different. In both countries it is an established doctrine that the sovereign authority has no liability for the acts of its agents and cannot be sued for such torts as they commit. It is true that in England the national government, and in America both the national and state governments, have permitted suits to be brought against them by individuals in certain cases; but the general principle that the individual citizen cannot sue either the nation or the state is still firmly maintained. The national and state governments of the United States are not responsible for the torts of their officials or agents save insofar as they have voluntarily assumed such liability, and this they have done to an almost negligible degree.[1]

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[1] English writers have been disposed to look upon this as an indication that the legal rights of the individual, as against the public authorities, are less extensive in Continental countries than in England or America. They point out that if individuals in the latter countries suffer injury from the wrongdoing or negligence of a public official they may hale him before the ordinary courts and get a judgment of damages against him, whereas in France and Italy the official, if he commits the wrongful act in the supposed execution of his duty, is answerable before the administrative courts only. But the actual operation of the two systems is such that the aggrieved citizen is likely to get no real redress in England or America whereas in Continental countries his redress is an actuality even if he must procure it through special channels. Of course the Englishman or American whose property is damaged by the negligence or malfeasance of a public official can bring the official into court and obtain an award of damages. But it is an award against the official personally, not against the public treasury, which means that it is often not collectible. In the countries of Continental Europe the award of damages, when given, is against the state or city, and hence can always be collected. For an interesting discussion of this subject, from the Continental point of view, see Léon Duguit, *Law in the Modern State* (N. Y., 1919), Ch. vii.

Dual Position of the American City as Respects Its Functions.

What is the legal position of the American city in this respect? Does it share the sovereign legal immunity of the state, or is it like a private corporation liable in damages when one of its officials or employees, through negligence in the course of his employment, does an injury to the person or the property of an individual? The answer is that the municipal corporation, as respects such liability, occupies a dual position. It is an entity created by the state for the more convenient performance of purely governmental functions. It acts as the agent of the state in certain matters such as the enacting of ordinances, the enforcement of the state laws, the raising of taxes, and the conduct of elections. Were there no municipal corporations the state governments would have to perform these functions directly. It is plausible to argue that since the state is not liable for the torts of its agents the city should also be immune from liability insofar as it is merely serving as the agent of the state. And that contention has been generally supported by the courts. Where it can be shown that the damage resulted from the performance from a public or governmental function the city is not ordinarily held responsible for the negligence of its officials or employees.

1. Its Governmental Functions.

2. Its Quasi-Private Functions.

But the city is also engaged in the performance of functions which are not of a strictly governmental character; it distributes water; it often manufactures and sells gas and electricity, and it occasionally operates a street railway. These are revenue-producing activities of a commercial rather than of a governmental character. They are services which, if the city did not furnish them, would be provided by private corporations. In many cities, indeed, they are provided by private corporations. Hence it may reasonably be contended that when a municipal corporation ventures into this domain of commercial enterprise it should take the risks as well as the rewards, the liabilities as well as the emoluments. For the acts of its agents or employees it should be liable to the extent that a private corporation is liable. The courts have upheld this contention practically without exception. They have required the city to assume liability for the exercise of what they term quasi-private or non-governmental functions.[1]

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[1] How, then, may the citizen obtain redress when he has been clearly wronged by some official action on the part of the state or the nation? The only course, as a rule, is to petition Congress or the state legislature for redress by means of a special legislative act. These special acts, usually carrying an appropriation of money to be paid in damages to the aggrieved individual or corporation, are not at all uncommon.

Application of This Distinction to the Matter of Liability.

1. No Liability for the Non-use or Misuse of the Ordinance Power.

In conformity with this fundamental distinction it has everywhere been held that a city is not liable for damages which may arise from the imprudent exercise or the non-exercise of its ordinance-making power. If the legislative authorities of the city enact an ordinance which is beyond the scope of their powers, or is unreasonable, discriminatory, or otherwise defective, the ordinance will be voided by the courts; but the city cannot be held liable for any damage that may have resulted from the enactment and the temporary enforcement of the ordinance in question. The manner in which the city shall exercise its legislative power is altogether discretionary. It is not liable for a failure to enact ordinances or bylaws on any subject unless the duty of enacting them has been expressly imposed by statute. Where a general power has been conferred on the city, "no person has a right to demand the exercise of this power in any particular way or to any greater extent than the mayor and council, in good faith and in the exercise of their discretion, may see proper to provide.[2] When, moreover, a city has enacted ordinances or bylaws covering any matter within the scope of its powers it is not liable for the lax enforcement of the same, when such laxity results in injury to private property.[3]

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[1] In the case of Lloyd *v.* The Mayor (5 *New York*, 374), Judge Foot stated the underlying principle clearly. A municipal corporation, he says, "possesses two kinds of powers, one governmental and public, the other for private purposes." To the extent that the former are held and exercised the city is "clothed with sovereignty." To the extent that the latter are held and exercised, the municipality is "a corporate legal individual."

[2] McDade *v.* Chester, 117 *Pennsylvania State Reports*, 414. In this case the laws of Pennsylvania had empowered the mayor and council of Chester to "prohibit the manufacture of fire works . . . by such means as to them shall seem best." But the mayor and council established no such prohibition and the plaintiff was injured by an explosion which subsequently occurred in a fireworks factory situated in the city. He alleged, in substance, that the city had neglected a duty, that his injury arose from this neglect, and that the city was liable to him in damages. The court held that the power to make a prohibitory ordinance was discretionary and that the city was not liable for the manner in which its discretionary power might be used.

[3] Millett *v.* Princeton, 167 *Indiana*, 528, in which a city was held not to be liable for injuries arising from gross neglect to enforce an ordinance

2. Or for the Non-abatement of Nuisances.

From time to time the statutes confer on cities the power to compel the abatement of nuisances, to designate fire limits, to provide regulations in the interest of public health, and to make rules for traffic in the streets. In most cases it is highly desirable in the public interest that the municipal authorities should make use of these powers, and serious damage to private individuals sometimes results when they do not; but it is now a well-settled doctrine of law that the individuals, in such cases, have no valid ground of suit against the municipal corporation. Even when the city has been privy to the existence of the nuisance by authorizing or licensing it on private property no liability attaches. Where a city, for example, granted a license for a shooting gallery to be established on private property, but with the targets so dangerously near the street as to be a nuisance, it was held that an individual who was struck by a bullet while standing on the sidewalk could maintain no action against the city.[1]

3. Or for Wrongful Use of Its Administrative Discretion.

A like immunity attaches to the city in connection with the exercise of its general administrative functions. In making health regulations or traffic rules, in exercising its powers of censorship over theaters and places of amusement, or, to take an extreme case, in giving its officials authority to demolish private property as a means of arresting the spread of a conflagration, it is exercising governmental powers of a discretionary nature. The municipal corporation incurs no legal liability because of any wrong decisions which its council or administrative officials may reach in such matters. It is not liable, moreover, for losses caused by its having misconstrued the scope of its powers, for example, in granting a franchise, permit, or license which it had no authority to grant. It should be mentioned, however, that liability in any or all of these cases may be specifically established by statute, and occasionally it is so established.

The Question of Liability for the Torts of City Officials and Employees.

When it comes to the actual administration of the various municipal departments, the question of liability or immunity is by no means a simple one. The work of these departments is of great range and variety. Some of them perform functions which are clearly of a public or governmental character, repre-

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which prohibited bicycle-riding upon the sidewalks. While this is the general rule, the courts have occasionally taken a contrary view.

[1] Hubbell *v.* Viroqua, 67 *Wisconsin*, 343.

senting services which the city, as the agent of the state, provides freely for all its citizens and from which it derives no revenue. The police department is a good example. For the acts of its agents or employees in such departments the city incurs no liability. But some other departments are engaged in performing quasi-private or commercial functions, representing services for which a charge is made, and which yield the city an income of considerable proportions—the water department is a good illustration. For the acts of its agents or employees in departments of this class the courts have held the city to the same liability as a private water or gas company. Finally, there are a few departments of which it cannot be said that they are clearly in one class or the other; the functions which they perform are not by their nature so clearly governmental or so obviously commercial that they fall readily into either category; so they form a sort of twilight zone or no man's land, governed by no fixed rule as regards the degree of immunity which the municipal corporation enjoys. An example may be found in the work of the city department which has charge of removing ashes and rubbish from stores and dwellings.

The Rule of Law Illustrated.

1. Police Officers.

Let us see how these distinctions work out in practice. The status of the police department is beyond question. Its work is strictly public and governmental. Police officers, although appointed and paid by the city, are agents of the state. The city is not liable for damages which may result from the negligence of the police or from the acts of police officers who exceed their authority. A police officer, by a misuse of his authority, may commit a trespass or an assault. The aggrieved individual in that event may sue the policeman or complain to his superior officers; but no damages can be recovered from the city.[1] The immunity of this department covers not only the usual range of police duties, such as patrolling, investigating and making arrests, but other public functions to which police officers may be assigned, such as the inspection of buildings, the listing of voters, or the granting of licenses.

2. Firemen.

The fire department is in the same favored position. In the absence of an express statutory provision holding a city liable it is not required to assume responsibility for the torts of the fire department officials or employees. The immunity extends to

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[1] Buttrick *v.* Lowell, 1 *Allen* (*Massachusetts*), 172.

3. Certain Other Employees.

injuries which they may commit through negligence or want of skill on their way to fires, at fires, or coming home from fires.[1] It even covers the city's neglect to provide suitable fire-fighting appliances, or its failure to keep them in repair, or to furnish a sufficient supply of water for the apparatus. Health protection, education, poor relief and management of parks and the care of public buildings have likewise been held to be strictly governmental functions in the exercise of which no liability attaches to the municipal corporation for what its officers may do.

4. Employees in the Public Utilities Owned and Operated by the City.

Various other municipal functions, however, come very clearly within the class of quasi-private or commercial enterprises. Public lighting plants and street railways afford the best examples. There has never been much question as to the liability of the city for the torts of its employees in connection with such activities. In the case of a municipal electric lighting plant, for example, the city is liable for damage which result from the defective insulation of wires due to negligence. The water service, although it has an obvious relation to the public health, is nevertheless held to be quasi-private or commercial in character. The city's liability is the same as that of a commercial water company. It is an established principle that if the city's water department neglects to keep its reservoirs, mains, or pumping stations in proper order the municipal corporation becomes liable for resulting damages. Markets, cemeteries, and docks, when owned by the city are in the same class. In providing these services the city is taking over functions which otherwise would be provided by private concerns and it should assume similar liabilities. Were it not so the policy of public ownership would have an unjust advantage over private enterprise, an advantage gained at the expense of the individual citizen to whom public ownership would be a denial of redress.

5. Employees in the Highway Department.

No serious difficulties arise in connection with the various departments mentioned in the preceding paragraphs. The ordinary layman, unskilled in the subtleties of the law, can grasp the principle by which the city's liability or lack of it is governed. But there are other departments whose status is not so clear. Take the construction and maintenance of streets, for example, cr the management of the sewerage system, or the removal of ashes and garbage. Are such functions governmental or quasi-private? In most states the courts have held cities liable for negligence in the performance of their duty to keep the streets in proper repair; but for a similar default counties and towns have not been held responsible save in rare cases. Various reasons have been assigned by the courts for making this distinction but they are not altogether satisfactory.[1] If the streets are not the property of the city, as the courts have so repeatedly declared, why should the city be responsible for what may occur in connection with them? The maintenance of highways has been, ever since Roman times, a governmental function and to a large extent a national or a state enterprise. There is no fundamental difference, either in nature or in use, between a state highway and the main thoroughfare of the municipality. In a few states the courts have accepted the logical deduction from this historical fact and have held that the city is free from civil liability for failure to keep its streets in a safe condition; but in a large majority of them the distinction stated above has received the sanction of the courts. In the absence of state laws which make a contrary stipulation, cities and incorporated towns are held liable, while counties, townships, and other municipal corporations are not. This distinction is one which the layman fails to understand, and he cannot be blamed for it.

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[1] See the various cases cited in John F. Dillon's *Commentaries on the Law of Municipal Corporations*, Vol. III, p. 1340. For an interesting departure from the general rule, see below p. 230, *footnote*.

6. Employees in the Sanitary Department.

In the matter of sewers and drains the general rule is that the municipality, in planning a scheme of sanitation, performs a governmental function in which it is entitled to use its own discretion. If, therefore, it fails to provide adequate gutters along the streets and thereby permits surface water to flood private property, or if it provides a system of sewers which is inadequate to the public needs or is otherwise defective in general plan, no liability attaches unless a positive nuisance is created. But the routine work of caring for the sewerage plant and mains, after these have been constructed, is usually held to be a "ministerial" duty which does not admit of discretion and one which, if negligently performed, renders the city liable.[1] This is not altogether a satisfactory arrangement, for the distinction in actual practice is often very difficult to draw. Damage to the property of individuals may be, and frequently is, the joint product of inadequate planning and defective care. In some states, therefore, a municipal corporation is held responsible for negligence in devising the plan of a sewer, as well as for its faults in carrying the plan into execution.[2] As respects the removal of ashes and garbage, the cleaning of streets, and the removal of snow there is an almost hopeless conflict of decisions. The city is held responsible in some states for the torts of its employees in these branches of administrative work; in others it is held immune.

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[1] The question is such a complicated and technical one that these various reasons cannot even be summarized here without incurring a grave risk of doing it very inadequately. For a discussion of them see F. J. Goodnow, *Municipal Home Rule*, pp. 144-146. Attention may also be drawn to the argument of Judge Gray in Hill *v.* Boston (122 *Massachusetts*, 344, 369). The question is dealt with at great length in John F. Dillon's *Commentaries on the Law of Municipal Corporations*, Vol. IV, pp. 2945-3035.

Unsatisfactory Condition of the Law as Regards the City's Liability for the Torts of Its Agents.

The entire question of municipal liability is in a rather unsatisfactory situation. Individual citizens are injured in person or property through the negligence of municipal employees in the so-termed governmental departments, yet no effective compensation is available to them. A hose truck, on its way home from a fire, is negligently driven across a street intersection and seriously injures an individual. The negligence of the driver may be freely admitted, but the injured individual has no ground of action against the city. Most people would agree that he has a moral right to redress as against the driver's employers and ought to have a legal one.[3] It is not in accordance with elementary justice, as the ordinary man understands it, that an admitted wrong should go unrighted because it was committed by a public employee whose name happens to be on the payroll of one city department rather than on that of another.

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[1] Barton *v.* Syracuse, 36 *New York*, 54; also Keeley *v.* Portland, 100 *Maine*, 260.

[2] Rice *v.* Evansville, 108 *Indiana*, 7.

[3] In a recent case (Fowler *v.* The City of Cleveland, 100 *Ohio*, 158 (1919) the Supreme Court of Ohio held the city liable for the negligence of an employee of the fire department. In this instance the driver of a hose truck, on his way from a fire to the fire-station, drove the truck diagonally across a street intersection and on the wrong side of the street, striking the plaintiff and seriously injuring him. The court held that the function of fire protection was *not governmental.* In a concurring opinion one of the justices argued for the general extension of municipal liability. See the interesting discussion of this case in the *Harvard Law Review*, Vol. XXIV, pp. 66-69. This note sums up the variations in the decisions of the courts concerning what are governmental functions and what are not.

The Objection to Widening the Sphere of Liability.

On the other hand there are difficulties in the way of establishing any doctrine of universal civic liability. The present policy of exemption from liability in the so called governmental departments may be unjust. But would a different policy be less so. When we feel any principle of law to be unjust it is a good plan to recall the mental process with which we became acquainted in plane geometry, namely, that of proving a proposition by demonstrating the absurdity of its only alternative. "For if not, let the contrary be true . . . which is absurd!" The principle of non-liability is alleged to be unjust; so let us assume to follow the contrary principle; let the city be held liable for all the torts of all its employees in all departments. Would less injustice, or more, result from the application of this principle?

The city, we assume, has now become liable for the negligence of its fire department employees. Every fire at once becomes the potential basis of a suit for damages against the city. It is alleged that the engines were slow in getting to the fire, that the employees were negligent in attempting to put it out by one method rather than another, that their appliances were defective, and the water pressure inadequate. Witnesses of all sorts, expert and otherwise, are brought forward on both sides. The questions at issue, being matters of fact and not of law, are for the jury to decide. If negligence be proved to the jury's satisfaction (and that should not be a difficult task in any municipal department) the city would be assessed in damages amounting to many thousands, and perhaps to millions of dollars; for a great conflagration runs into the millions very quickly. To defray the judgment special taxes would have to be levied on the property of all the citizens. That assuredly would not impress them as absolute justice or anything approaching it, and especially so if the award went to an insurance company, as would often be the case. The establishment of civic liability for negligence in the fire department would virtually render the city an insurer of every person's property within its jurisdiction.[1] It would make the municipal corporation a guarantor of absolute efficiency in every department. The taxpayer would be saddled with a burden which, according to the common notion of justice, does not belong to him. So we escape from one horn of the dilemma to be impaled on the other.

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[1] Wilcox *v.* Chicago, 107 *Illinois*, 334.

Nevertheless the tendency of the courts in recent years has been towards broadening the area of municipal liability. The drift of American law has been in the direction of spreading upon the whole community the cost of compensating the individual for injuries done to him from whatever source. It is merely a question of dealing with inevitable mishaps in such way as will produce the minimum of hardships. When damage is done to the person or property of a citizen, through no fault of his own (or even through his own contributory negligence) is it expedient that he should be made to bear the entire burden? May not the best interests of the whole community be served by "socializing" the load, spreading it out so that it will not come with more than a very slight weight on anybody? Legislators and courts are now thinking less about justice or injustice to individuals and more about the ultimate well-being of society as a whole.

REFERENCES

In addition to the general references appended to Chapter X the following more definite citations may be of value to those desiring to pursue any phase of this subject farther: John F. Dillon, *Commentaries on the Law of Municipal Corporations* (5th ed., 5 vols., Boston, 1911), corporate property, Vol. III, pp. 1553-1599; eminent domain, pp. 1600-1684; streets, pp. 1765-1903; franchises, pp. 1904-2087; public utilities, pp. 2088-2309; civil actions and liabilities, Vol. IV, pp. 2807-3064; Eugene McQuillin, *A Treatise on the Law of Municipal Corporations* (Vols. 1-6, Chicago, 1911-1913; supplementary Vols. 7-8, Chicago, 1921), corporate property, Vol. III, pp. 2453-2558, Vol. VII, pp. 7232-7246; municipal contracts, Vol. III, pp. 2559-2777, Vol. VII, pp. 7247-7304; actions by and against municipal corporations in general, Vol. V, pp. 5119-5283, Vol. VIII, pp. 8129-8169; municipal liability for torts, Vol. VI, pp. 5374-5776, Vol. VIII, pp. 8214-8473; Edward F. White, *A Treatise on the Law of Negligence of Municipal Corporations* (Indianapolis, 1920), general principles of municipal liability for negligence, pp. 26-76; negligence of boards, officers, agents, and employees, pp. 77-108; negligence in connection with public buildings and grounds, pp. 127-137; theories of municipal liability for highway injuries, pp. 237-238; John E. Macy, *Selection of Cases on Municipal or Public Corporations* (Boston, 1911), liability for torts, pp. 336-405; Joseph H. Beale, *Selection of Cases on Municipal Corporations* (Cambridge, 1920), liability on contracts, pp. 474-529; liability for torts, 530-652. Special mention should also be made of

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The Index to Legal Periodicals and Law Library Journal, published quarterly (New York, The H. W. Wilson Co.), contains references to notes on the more recent cases in this field. The monthly issues of *The American City* contain a section devoted to "The City's Legal Rights and Duties."

CHAPTER XII

THE VOTERS OF THE CITY

The Total Eclipse of Free Suffrage in Europe.

To narrate the history of suffrage in cities would be to describe the evolution of municipal government during the past eight centuries. We have already seen how the towns and boroughs of Western Europe wrested their charters of privileges from lord or king and how all the townsmen and burgesses, having shared in the task of winning emancipation, were appropriately rewarded by being given a share in the government. The suffrage in the emancipated town of the twelfth and thirteenth centuries was truly democratic; it extended to all adult male townsmen, or virtually to all. But this era of manhood suffrage in the cities did not long endure. Everywhere on the Continent, as has been pointed out, the ordinary citizen's share in local government diminished until ultimately it amounted to nothing at all. Few things are more remarkable in history than this total eclipse of municipal democracy throughout the European continent during the period which intervened between the opening of the fifteenth century and the close of the eighteenth.

The Tradition Was Preserved in England Alone.

In England alone were even the forms of municipal self-government preserved. There likewise the democratic suffrage of the chartered boroughs narrowed until it no longer extended to any large fraction of the citizens. A privileged order of freemen, as in ancient Athens, ruled each town. But the tradition of local self-government survived in England during an age when it disappeared elsewhere. On the Continent people ceased to vote; in England the process of voting and electing went on, even though it often became a very perfunctory affair. It was in England, in the English boroughs and towns, that the spark of municipal democracy was kept alive.

One hundred and fifty years ago popular suffrage existed in no city of the old world. In the territories which we now designate as France, Germany, Italy, and Spain the cities were under

Municipal Suffrage As It Was a Century and a Half Ago.

the iron hand of the national government or were ruled by small groups of men whose supremacy in local affairs was based upon inheritance or wealth. In the boroughs of England the close corporations were in full control, and the same was true in most of the boroughs of colonial America. It was not until the last quarter of the eighteenth century that the era of democratic municipal suffrage began.

Development of the Suffrage in France Since 1789.

In France the first great triumph of manhood suffrage came with the Revolution and was embodied in the electoral decrees of 1789-1793.[1] This was a premature victory, however, and much of the ground was lost during the next half century. In 1848 manhood suffrage was once more proclaimed in France and since that date it has never been curtailed, although various devices were used during the Second Empire (1852-1870) to render popular control of local government a sham.[2] Manhood suffrage continues to be the rule in the cities of the French Republic today. The municipal code provides that the elective officers of the city shall be chosen by all male citizens who have reached the age of twenty-one years and who have resided in the municipality for at least six months prior to the completion of the voters' list. But provision is also made for the extension of the municipal suffrage to those taxpayers who are not residents. Any adult male citizen who pays one of the four chief taxes levied in the city is entitled to vote there even though he may reside elsewhere. He is not entitled to be enrolled as a voter in more than one municipality; but as between the city in which he pays taxes and the one in which he lives he may

Present Qualifications for Voting in French Cities.

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[1] Strictly speaking it was not manhood suffrage, but it was practically so, for the small property qualification shut out none but the very poorest citizens.

[2] "In the preparation of the voters' lists the mayors could expand or contract the lists like an accordeon. They did not operate upon individual names . . . they disfranchised whole masses of electors by keeping their names from the registers. . . . The voter was expected to bring his ballot to the polls already prepared to be placed in the voting urn. The mayor, however, placed beside the urn the ballots of the official candidate. Timid and inexperienced voters were commanded to take one of these and to cast it. This destroyed the secrecy of the ballot, for if they refused they gave themselves away. . . . The mayor took charge of the ballot box and carried it to his own home. Surveillance was of course impossible, and although the box might be sealed the contents were practically certain to be tampered with before morning." Charles Seymour and D. P. Frary, *How the World Votes* (2 vols., Springfield, 1918), Vol. I, pp. 363-364.

take his choice. Thus a man who owns property in Paris but lives in Versailles may vote in either place, but not in both. This arrangement has proved very agreeable to considerable numbers of business men whose property interests are in large cities but who for various reasons prefer to live in some suburban commune not far away.[1]

No Woman Suffrage in French Cities.

Women are not given the right to vote in French cities, nor do they possess the privilege at national elections. For many years there has been a universal suffrage movement in France, as in other countries; but it has not acquired great strength. Nevertheless, with woman suffrage established in Great Britain and Germany, as well as in the United States, it would seem as though France in due course must fall into line.

Development of the Suffrage in Germany Since 1808.

In Prussia the masses of the people had no real share in the government of their cities until the Stein-Hardenberg reforms of 1808. The reorganization of that year extended the suffrage to all citizens who owned land or pursued any vocation within the city limits. This was not complete manhood suffrage, although in actual practice it proved a close approximation to it, for only the idle and shiftless were barred. During this period every voter had equal rank at the polls; no distinction was made among members of the electorate by reason of differences in wealth or tax distributions. Written or printed ballots were in use, thus protecting the voter against intimidation. But in 1853, by the terms of the Prussian Municipal Code, the secret ballot was abolished and open voting substituted. The general range of the electorate was not appreciably narrowed by the provisions of the code; for the right to vote was now extended to every male citizen, twenty-five years or over, who paid taxes no matter how small the amount. But the principle of *equal* suffrage was discarded and an arrangement known as the "three-class system" was brought into operation. The details of this plan are now of antiquarian interest only, and need not be set forth here; but its general effect was to divide the entire body of voters into three unequal classes according to their rank as

The Three-Class System.

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[1] In the United States the policy of requiring that a voter shall be enrolled at his "legal residence" has led to various anomalies and to a great deal of subterfuge. See p. 243. Why would it not be better to adopt the French arrangement? The answer might be made that it would open the door to electoral frauds and lead to duplicate voting; but no such result has been encountered in France.

large, moderate, or small taxpayers. Each class voted separately and elected one-third of the city council which, in turn, chose all the other municipal officers.[1]

How It Operated.

The three-class system placed the control of the Prussian city in the hands of the well-to-do. Since the greater portion of the annual tax levy was contributed by from ten to twenty per cent of the citizens, this minority was able to elect two-thirds of the city council. In Berlin, for example, fewer than 50,000 voters in a total electorate of nearly half a million, formed the two upper classes. In Essen, the seat of the Krupp factories, two-thirds of the councilmen were chosen by about 500 voters while nearly 25,000 other voters, forming the third or lowest class of taxpayers, elected the remaining one-third of the council.[2] The plan had some superficial merits, it is true, in that it gave the control of city expenditures to those who furnished the bulk of the taxes, thus protecting the Prussian city from extravagance and waste. It provided a strong incentive to economy and so long as it was in operation the municipality obtained full value for its public outlays. Down to 1914 the cities of Prussia were regarded throughout the world as models of thrifty municipal administration.

Its Objectionable Features.

But the three-class system was a defiant negation of democracy, and the wonder is that it managed to survive into the twentieth century. It tended to make municipal government a matter of marks and pfennings, in which pecuniary profit and loss were the all-important considerations, while the human aspects of administration received scant attention. The city payroll was kept clear of idlers, to be sure; the poor-relief system was placed upon a strictly business basis; the streets were scrubbed to spotlessness; but never could the masses of the people be roused to enthusiasm over the achievements of a government which they felt to be beyond their control and unresponsive to their desires.

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[1] A full description of the three-class system is given in the author's *Government of European Cities* (New York, 1909), pp. 125-137.

[2] The three-class system often produced some ludicrous results. Prince Bülow, during his term as Imperial Chancellor, voted in the third class with the proletariat, for he was not a large property owner; the only member of the first class in his district was a sausage-maker. Men of great scientific attainments frequently found themselves classed with the ʼοι Πολλοι, while brewers and proprietors of beer gardens went over their heads into the upper electoral grades.

The Lesson of the Three-Class Experiment.

The history of Prussian city government during the years 1853-1918 teaches the significant lesson that no matter how economical or how efficient an administration may be it will not prove satisfactory or permanently self-sustaining unless it be responsive to the will of a majority among the people. What the majority wants is not always synonymous with what is best and cheapest. Four-fifths of the adult male citizens in Prussian cities accounted it an injustice that the remaining one-fifth should control the conduct of municipal administration.[1] The fact that the one-fifth made a successful job of it did not weigh greatly in alleviating this feeling of injustice. People everywhere prefer to be governed by themselves, even though they thereby incur the risks of misgovernment. The expressions "consent of the governed," "self-determination," and "home rule," all of which fundamentally mean the same thing, are not mere shibboleths; they point to an underlying civic aspiration. "It does not suffice that government shall be honest and skilful; if it does not carry with it in the popular mind the consciousness of consent it will inevitably find itself restricted in its operations, lacking in stability, and thus falling far short of efficiency."[2]

The New Universal Suffrage in German Cities.

The three-class system was abolished by the German Revolution of 1918. During the disorganization which followed the military *débâcle* the Socialist elements in the city councils assumed control of the municipal governments everywhere. Under the title of public safety committees or workers' councils they continued in control pending new elections. This they did without any formal changes in the provisions of municipal codes or laws. The new German constitution, framed and adopted at Weimar in 1919, contained the requirement that all elections throughout the Reich, whether national, state, or municipal, should be based upon the principle of direct, universal, equal, and secret suffrage. Even before the adoption of this requirement, however, the Prussian government issued a decree embodying a similar provision for all state and local elections in Prussia.[3]

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[1] The injustice seemed all the greater by reason of the fact that manhood suffrage was established in national elections by the terms of the imperial constitution.

[2] Sidney and Beatrice Webb, *English Local Government* (6 vols., London, 1906-1922), Vol. III, p. 729.

[3] *Verordnung der Preussischen Regierung ueber die anderweite Regelung des Gemeindewahlrechts, vom 24. Januar, 1919.* § 1.

The other German states have taken the same course, so that the municipal suffrage now extends throughout Germany to every German, man or woman, twenty-one years of age or over. Each state is permitted to make reasonable rules as to length of residence required; in Prussia the term has been set at six months in the municipality.[1]

Development of the Suffrage in England.

In England the history of the borough suffrage is a long and rather complicated story with which this book is not going to burden its pages.[2] Prior to 1835 there was no uniformity in the municipal suffrage requirements; they differed from borough to borough; but they were almost everywhere successful in shutting out the majority adult male inhabitants. Some boroughs gave voting rights to those who paid an ancient levy known as "scot and lot"; others admitted to the suffrage were all those who had the "potwalloper" qualification—a term which was applied to adult male inhabitants who had sole dominion over an abode with a hearth in it for cooking food. Some boroughs restricted their electoral lists to holders of "burgage" property, in other words to the owners of property under a certain uncommon tenure; while others admitted all "freemen" in the technical sense. In many instances the freemen formed less than two or three per cent of the population. There were some boroughs in which no great narrowing of the suffrage had taken place; in these the right to vote was given to all residents who paid taxes of any sort; but such boroughs were exceptional.

Prior to 1835.

English Municipal Suffrage Today.

The act of 1835 greatly enlarged the borough electorates by extending the suffrage to all adult male taxpayers of at least three years' standing.[3] A further extension was made in 1882 by provisions which conferred the right to vote at borough elections on all adult men, unmarried women, and widows who, being British subjects, occupied any taxable property, no matter how small its value, within the municipal limits, provided such occupants also resided within the borough or within seven miles thereof.[1] This provision marked an important step forward, but it did not approximate the grant of universal suffrage. Married women were entirely excluded; so were men who occupied lodgings only. In 1918, by the Representation of the People Act, full manhood suffrage was established for parliamentary elections and, in addition, an almost complete measure of woman suffrage in the case of women thirty years of age or over.[2] But a less drastic change was made in the qualifications for voting at municipal elections. The municipal suffrage extends only to men who occupy, as owners or tenants, some form of premises (other than lodgings) in the municipality, to women over twenty-one who possess the same qualifications, and to the wives of voters (if thirty years of age or over) who are joint occupants of qualifying premises with their husbands. This restriction excludes thousands of men servants, lodgers, and adult sons or daughters, who live with their parents. England is today the only important country in which the qualifications for voting at national and municipal elections are materially different. The municipal suffrage is still tied up with the occupation of property; the national suffrage has been cut loose from this connection so far as male voters are concerned.

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[1] *Ibid.*, § 2.

[2] Those who are interested in the antiquarian aspects of the English municipal suffrage will find these described in such books as H. A. Merewether and A. J. Stephens' *History of the Boroughs* (3 vols., London, 1835); S. and B. Webb, *English Local Government* (6 vols., London, 1906-1922), Vol. III; J. R. S. Vine, *English Municipal Institutions* (new edition, London, 1922); Charles Seymour's *Electoral Reform in England and Wales* (New Haven, 1915); Edward and Annie G. Porritt's *History of the Unreformed House of Commons* (2 vols., Cambridge, 1903); Josef Redlich and F. W. Hirst, *English Local Government* (2 vols., London, 1903), and A. Lawrence Lowell's *Government of England* (2 vols., New York, 1912).

[3] Webb, *English Local Government*, Vol. III, p. 749.

Development of the Suffrage in the United States.

In the United States the policy of universal suffrage, with certain limitations which will presently be indicated, is now established for all elections, whether national, state or local.[3] There was no such uniformity a hundred years ago. In colonial days the voters in some parts of the country did not exceed two per cent of the population, and even after the Revolution the suffrage was not greatly widened. The old feudal idea that suffrage was a privilege connected with land could not be easily overthrown; it continually cropped out in the writings and arguments of the post-Revolutionary era. In 1787, when the new federal constitution was framed, there was a good deal of discussion as to who should be permitted to vote at congressional elections and the fact that almost every state had a different requirement for voting at its own elections made this question a very difficult one to decide. Hence the convention was glad to evade a decision by leaving each state to settle the matter for itself, subject to certain broad limitations.[1] Except in one state, manhood suffrage was nowhere the rule at the close of the eighteenth century.

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[1] The qualifying property may be a shop, factory, office, house, or apartment; it may even be a rented tennis court, a boat house, a garage, or even a vacant piece of land. Thus a person may be an "occupant" although not a resident. The decisions of the courts as to what constitutes an "occupant" are curious. A man living in furnished lodgings is not an occupant; but if he rents an unfurnished room and installs furniture of his own (or furniture rented from any one other than his landlord) he is an occupant and entitled to vote at borough elections.

[2] 8 George V, Chap. 64.

[3] A full account of suffrage development in the United States may be found in A. E. McKinley's *Suffrage Franchise in the Colonies* (Boston, 1905) and in Kirk H. Porter's *History of Suffrage in the United States* (Chicago, 1918).

The Winning of Manhood Suffrage.

During the first four decades of the nineteenth century, however, a movement for the abolition of property and taxpaying requirements gradually increased in strength and succeeded in converting the various states, one by one, to the principle of manhood suffrage so far as the free population was concerned. The greatest progress in this direction was made during the years 1820-1845 when New York, Massachusetts, and other leading states threw property qualifications overboard. The growth of the West, as has been explained, lent impetus to the movement. These pioneer territories were intensely democratic in spirit and their new territorial governments rested upon manhood suffrage from the outset. The repercussion of this frontier democracy was felt by the eastern communities. With a few scattering exceptions all property qualifications for voting had been abolished throughout the United States by 1850. Rarely, moreover, was any distinction made between the qualifications for voting at state and municipal elections. When manhood suffrage came in for the one it came in for the other.

The Winning of Woman Suffrage.

The movement for woman suffrage in the United States began as soon as the last barrier to manhood suffrage in the northern states had been cleared away. The agitation reached considerable proportions during the fifties, but before it had become effective the Civil War gave the nation other things to think about. After the war was over the issue was revived, but it made very slow progress in the face of hostile public opinion. Not until 1889 did any state open its voters' lists to women.[1] After 1900, however, other states began to fall in line and by 1914 equal suffrage had been established in nearly a dozen of them. The chances of securing a suffrage amendment to the national constitution grew correspondingly brighter and the efforts of the suffrage leaders were now directed towards Washington. An amendment providing that the right to vote shall not be abridged by the United States, or by any state, on account of sex, was accepted by Congress and submitted in 1919 to the states for ratification. In 1920 it had received the assent of the required three-fourths and became effective.

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[1] Article I, Sec. 2. Further limitations have been imposed by Amendments XV and XIX.

The Right of Women to Vote at City Elections.

The nineteenth amendment requires that women shall be given the right to vote at city elections although it does not say so in express terms.[2] The qualifications for voting in city elections are everywhere fixed by state constitutions or by state laws, hence the nineteenth amendment, by controlling the action of the states, controls the suffrage in the cities. It will be noted, however, that nothing in the amendment prevents the imposition of educational, or tax-paying, or residential qualifications with respect to women voters. Such matters, as regards both men and women, are still within the jurisdiction of the states. Nor does it confer upon women the right to hold public office, or to serve on juries, or any other right except the right to vote.

The Suffrage in American Cities Today:

(*a*) Citizenship.

(*b*) Age.

Since 1920 it has been approximately correct to say that every adult citizen, male or female, is entitled to vote at all elections in the United States. This statement, however, is not absolutely accurate, for certain requirements in the way of residence, literacy, or the payment of taxes still exist in all the states. Until recent years it was the custom, in several states, to include among their voters aliens who had declared their intention of becoming citizens, but full citizenship is now a requirement for voting in all but two of them.[3] The voting age is uniformly fixed, in all

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[1] This was Wyoming, which was followed in 1893 by Colorado, and in 1896 by Utah and Idaho.

[2] "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of sex."

[3] These are Arkansas and Missouri, which permit the enrolment of persons who have merely declared their intention to become citizens. In both of these states, however, constitutional amendments to exclude all but citizens are shortly to be voted upon. Indiana and Texas, by constitutional amendments adopted in 1921, established citizenship as a requisite for voting.

American states and cities, at twenty-one years, but there is usually a provision that persons approaching their twenty-first birthday may be enrolled if the election is to be held subsequent to that date.

(*c*) Residence.

In all American cities a certain minimum of legal residence is required. This minimum is commonly six months or a year. Legal residence ordinarily means actual habitation in the city; but it is possible for a person to be a legal resident of a community without actually spending his days and nights in it. To be a legal resident it is usually essential to have some definite connection with a place of residence, either as an owner or an occupant; but the important consideration is a *bona fide* intent to be a legal resident. Persons who move from one city to another, but not to be gone permanently, may retain their status as legal residents of the former place. Hundreds of federal officers, for example, actually live in Washington while retaining a legal residence, and incidentally the right to vote, in other cities. The President of the United States, to take a conspicuous illustration, may be absent from his own city for four or eight years without losing his legal residence there. Every citizen is entitled to a legal residence somewhere, and if he has an actual residential connection with two cities, he is usually privileged to take his choice.[1] He cannot, however, be a legal resident of more than a single community at any given time. The legal residence of a married woman customarily follows that of her husband. In some states, however, it has been provided by law that *for voting purposes* a married woman may have a legal residence apart from that of her husband.[2]

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[1] While the intent of the individual is a very important factor it is not a controlling one if the facts point the other way. Take, for example, the case of a university student, over twenty-one years of age and otherwise qualified as a voter, who has actually lived for the prescribed period in the city where the university is situated. Can he claim to be a legal resident? In a well-known Massachusetts case the court held that a student who was self-supporting could properly make this claim but that one who was being regularly supported by his parents, resident in another city, could not do so. In other words an assertion of intent to be a legal resident is not conclusive if the actual circumstances contradict it. Williams *v.* Whitney, 11 *Massachusetts*, 424.

[2] This provision has been made in Massachusetts for example. For purposes other than voting (e.g., in matters relating to taxation, or the probating of wills, or the status of a suitor in the courts) the old rule concerning the common legal residence of husband and wife remains in force.

Importance of "Legal Residence."

The question is seriously complicated by the fact that an individual's legal residence determines where he shall pay his taxes on intangible property, or his state income tax, as the case may be. It also determines various questions relating to the probating of a will, and the taxing of an inheritance. The *lex domicilii,* or law of the place of residence, is controlling in many matters of personal property, hence it often becomes very important to determine where a man's domicile or legal residence really is. Every state has its own rules as to the scope and rates of taxation; some are much more lenient than others. In the case of persons who have large incomes from stocks, bonds, and mortgages, the retention of a legal residence is not merely a matter of sentiment; it may involve a difference of several thousand dollars per year in tax payments or may greatly influence the inheritance of personal property. For this reason many persons are at pains to secure or to retain a legal residence in one state or city, while spending most of their time, or all of it, somewhere else.

(*d*) Literacy.

Nineteen states have established an elementary educational test for voting.[1] These states may be grouped into two classes. Some of them, chiefly northern and western states, including New York, Massachusetts, Maine, Connecticut, and California, apply the literacy test to all voters without discrimination.[2] Others, particularly in the South, use the educational requirement as a means of circumventing the provisions of the Fifteenth Amendment which forbid the disfranchisement of any citizen on grounds of race, color, or previous condition of servitude. Their tests are designed to exclude the illiterate negro but not the illiterate white man. Sometimes, accordingly, the educational test is made the alternative to a property or taxpaying qualification. One ingenious method, that of exempting from the literacy test all persons who possessed the right to vote prior to 1866, and all descendants of such persons, has been held by the Supreme Court to be unconstitutional.[1] Another plan is to require that the applicant for enrolment as a voter shall demonstrate his ability to read a section drawn from the state constitution or, as an alternative, shall "give a reasonable interpretation of its meaning" when the section is read to him by the registrars.[2] As the registrars are in all cases white citizens it is easy to see how this device makes possible the admission of illiterate whites while precluding the enrolment of illiterate negroes. The constitutionality of this provision has never been determined; but the words of the United States Supreme Court in another decision on quite a different matter would seem to be applicable here.[3]

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[1] These are Alabama, Arizona, California, *Connecticut*, Delaware, Georgia, Louisiana, Maine, *Maryland*, Massachusetts, *Mississippi*, New Hampshire, New York, North Carolina, Oklahoma, South Carolina, Virginia, *Washington* and *Wyoming*. Those in italics require that voters shall be able to read; the others that they be able to read and write.

[2] The only exemptions in these states apply to persons who are physically incapacitated by infirmity from taking the test, or who are beyond a certain age.

Are Literary Tests for Voting Desirable?

Is it desirable that a literacy test, fairly applied to all without discrimination or general exemptions, should be established throughout the United States? To this question, which concerns the cities more than the rural areas owing to the large foreign-born elements which they contain, an explicit answer is not easy. On the one hand it is pointed out that men and women who have never had the advantages of even a grammar school education may nevertheless be politically intelligent and better informed on questions of government than those who have had greater educational opportunities. People are not required to read or write in order to own property. Illiterates are taxed like everybody else. Men who could neither read nor write were drafted for military service during the war. If we compel illiterates to perform the onerous duties of citizenship can we fairly deny them its customary privileges? That is one way of looking at it. But the question should be approached from the standpoint of what is best for the whole people regardless of its relation to a certain small minority of the population. It is difficult to see how anyone can intelligently use a ballot which he is not able to read, and this is particularly true when referendum questions appear on it. It is true, of course, that a certain type of ballot upon which the names of candidates are arranged in party columns, with a party symbol at the head of each, can be marked by illiterate persons without mishap; but the necessity of using this type of ballot is inimical to the interests of honest and efficient city government. If issues of public policy, as well as the names of candidates, are to be submitted to the voters of the cities at every election is it not advisable, in the interest of an intelligent popular decision, that the verdict be rendered by those who are able to read the questions? Bear in mind that no illiterate person can now be naturalized. Remember also that in every state of the Union a system of free elementary education is maintained at the public expense. The Declaration of Independence speaks of various "unalienable rights," but the right to remain illiterate does not happen to be one of them.

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[1] The unconstitutionality of this so-called "grandfather clause" was declared in Guinn *v.* Beal, 238 *U.S.* 368 (1914). In Oklahoma, after providing that all voters must be able to write, and to read a section from the state constitution, the exemption read as follows: "No person who was, on January 1, 1866, or any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such constitution." The Supreme Court held this provision to be an evasion of the Fifteenth Amendment.

[2] The story is told of a young negro in Virginia who was asked, by way of discovering whether he could give a "reasonable interpretation" of the constitution: What provision of the Virginia constitution was derived from Magna Carta? "The provision that no colored man shall have the right to vote," he replied. He was duly enrolled.

[3] "Though the law be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of justice is still within the prohibition of the constitution. Yick Wo. *v.* Hopkins, 118 *U.S.* 356.

(*e*) Payment of Taxes.

In several states the right to vote is restricted to persons who have paid their poll tax for the preceding year.[1] The amount of the poll tax is always small, but in cities it is evaded on a large scale because the population keeps shifting. In some of the southern states, where this requirement is rigidly enforced, it serves to exclude large numbers of negroes who are neglectful of their tax payments or who lose their tax receipts before the registration date comes around. Property qualifications for voting at municipal elections have everywhere been abolished.[2]

In all countries there are certain disqualifications from voting.

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[1] In Massachusetts the requirement is that male persons, in order to be enrolled as voters, must have been *assessed* for poll taxes.

[2] In Rhode Island the right to vote for city councillors is restricted to those who own property, either real or personal, to the assessed value of $134 or more, or who occupy premises of the rental value of at least $7 per annum. This latter provision really lets in everybody who is a *bona fide* resident, if otherwise qualified.

Disqualifications.

Insanity and conviction for serious crime are grounds of ineligibility everywhere. In France a voter may be disfranchised for various offences which are not in other countries accounted very serious. Offences connected with elections, such as bribery and fraud, are almost everywhere made the basis for exclusion from the lists. In England no one who is in receipt of public poor relief may vote.[1] This shuts out a considerable number, for public poor relief has been dispensed on a large scale in English cities particularly during recent years.

How Voters' Lists Are Compiled.

1. In French Cities.

The methods of compiling the voters' lists differ considerably in the various European countries and even among the several states of the Union. In France the listing is done in each city by an appointive board of three members.[2] The procedure is very simple. Taking the preceding year's list as its starting-point the board merely strikes off the names of those who have died, or moved away, or become disqualified, and adds the names of those who have attained the age of twenty-one years since the preceding revision together with new arrivals who have completed their six months' residence in the city. All this can be done from the records in the mayor's office which form the *état civil* or perpetual census. When the board of registration has finished its work the list is posted with the announcement that protests may be filed against omissions and wrongful inclusions. When the time for protests has expired, the board makes such further revisions as it sees fit and the list is then closed.[3]

2. In English Cities.

In English cities, owing to the fact that municipal suffrage is still related to the occupancy of property, the voters' lists are compiled by the town clerk from the assessment rolls.[4] The assessing authorities, in making up these rolls, place thereon the names of all occupants of taxable property. This does not mean, of course, that the occupant always pays the taxes on the premises which he occupies, although such is usually the case.[1] But lists compiled from the assessment rolls are likely to be defective and incomplete. They are therefore posted in public with an announcement that all claims and objections will be heard on a given date. After these claims have been presented the town clerk makes whatever changes he deems necessary and closes the lists. Anyone who is not satisfied may thereupon appeal to the county judge whose decisions are final except on questions of law. The latter may be carried by appeal to the higher courts.

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[1] Payments under the unemployment insurance act, of course, do not operate to disfranchise the recipient.

[2] The members are the mayor *ex-officio*, together with one member appointed by the city council and one by the prefect of the department (see p. 158) in which the city is situated. In large cities there is a separate board for each ward or district, but in this case the mayor is represented on each board by an adjoint whom he designates for this purpose.

[3] There is an appeal to the administrative courts from the final rulings of the board, but such appeals are very infrequent.

[4] Different lists are compiled for parliamentary elections because the qualifications for voting are not the same. The parliamentary suffrage is not now related to occupancy, hence the town clerk, in his capacity of registration officer, sends out "canvassers" who go from house to house registering voters. The register of parliamentary voters is revised twice a year, in January and July.

3. In American Cities.

In the United States the work of compiling the municipal voters' list is not performed in accordance with any uniform procedure. In most cities, however, it is entrusted to appointive officers known as judges of elections, or registrars of voters, or by some such title.[2] The would-be voter is required to take the first step; his name is not usually placed on the list until he applies for enrolment. Application for enrolment must be made on designated registration days some time before the date set for the primary or regular election. The applicant must appear in person; he is put under oath and questioned as to his citizenship, age, and length of residence in the city. If there is a literacy test it is applied by the registrars. The registrars may refuse to enroll an applicant if they feel that the legal requirements have not been fulfilled but an appeal from their decisions may be taken to such court as is designated by law for this purpose. The court may then, by writ of mandamus, order the registrars to enroll the applicant's name.

The Registrars of Voters.

Renewing the Lists.

In some cities the practice is to leave a name on the list so long as there is no change in the voter's residence; in others the whole list is compiled anew each year. This necessitates a complete re-registration, which is an irksome requirement and results in the disfranchisement of many voters who, through forgetfulness or procrastination, omit to register. In some of the large cities where there is a continual shifting of the population, however, it seems to be the only practicable way of keeping the lists up to date.[1]

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[1] See Vol. II, Chap. XLIII.

[2] The members of these boards are appointed in various ways but commonly by the mayor of the city. Boards of registration are usually bipartisan bodies, the legal requirement being that both the major political parties shall be represented on it.

Frauds in the Compilation of Voters' Lists.

In the cities of France, Germany, and Great Britain there has been relatively little fraud or corruption in the compilation of the voting lists. This is because the French cities, through their continuous census records (*état civil*), and the German cities through their system of police registration (*Meldewesen*) keep a fairly accurate tab on the whereabouts of their people. In England the assessment rolls afford a somewhat similar though less accurate check. But in the United States, particularly in cities where no poll taxes are assessed, there is no convenient way of checking up the statements of those who apply for enrolment. Boards of registrars have neither the time, nor in most cases have they the inclination, to verify the statements of the thousands who come before them each year. They take the applicant at his word unless somebody objects. The consequence is that in the largest cities, as investigations have frequently shown, the voters' lists contain the names of many "floaters," "colonists," "ringers" or "mattress voters" as they are variously called—persons who do not regularly reside at the addresses from which they are enrolled but merely sleep there one night in the year in order to have an excuse for claiming it as their legal residence. In this way scores of persons are sometimes registered from a single small hotel or boarding house, although the place would be incapable of affording them standing room if they all appeared on the premises at the same time. Many of them are "repeaters," that is, persons who obtain enrolment in several different wards of the city and are thus enabled to vote a half dozen times or more on election day. But these various abuses in connection with the compilation of the voters' lists are not nearly so common in the United States today as they were a few decades ago. Not only have the laws been made stricter but they are now more rigorously enforced.[3]

The qualified voters of the American city now form from

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[1] For a summary of the practice in various cities see the pamphlet entitled *A Proposed System of Registering Voters . . . in Chicago*, issued by the Chicago Bureau of Public Efficiency (1923).

[3] So widespread was the practice of "repeating" in New York City during the Tweed Ring era (1868-1871) that the vote cast on election day considerably exceeded the total number of legitimate voters in the city.

The Quality of the Municipal Electorate.

twenty-five to thirty per cent of the entire population. New York casts well over a million ballots at a municipal election. It was freely predicted that the admission of women to the suffrage would provide the cities with a more intelligent electorate, less firmly bound by the trammels of party allegiance and more ready to range itself on the right side of every moral issue. It is, of course, too early to form any definite opinion as to whether this prediction is or is not going to be justified. The ballots of women are not kept separate from those of men, hence it is impossible to determine what influence women have exerted upon the outcome of any municipal election. But so far as the superficial indications go, there is no reason to think that the extension of the suffrage to women has made any substantial change in the quality of the electorate. Women seem to be using the ballot in American cities in the way that men have used it, with no greater intelligence and certainly with no less. They are subject in the same degree to the same influences. There is as yet no indication that they are less moved by appeals to party allegiance, or to the various forms of prejudice, or that they insist upon a higher standard of honesty in public office than men have tolerated in the past. In the various municipal elections since 1920 it is difficult to find a single instance where the outcome would have been appreciably different with women excluded from the polls. Despite the doubling of the voters' lists Republican wards have remained Republican, and Democratic wards have remained Democratic. Bosses have not been dethroned or rings demolished by the wonder-working powers of the Nineteenth Amendment. All this is not to imply, however, that the extension of the suffrage to women was unwise. The adoption of equal suffrage has at least eliminated an irrelevant issue from practical politics. Sex is no more a sound basis of political issues than race or religion. The adoption of the Nineteenth Amendment has enfranchised many millions of women, and it is bound to develop among them an interest in public affairs which they never would have acquired so long as they were excluded from a direct share in the management of the city's affairs. Nor can we take it for certain that because women have thus far shown the same electoral characteristics as men they will always continue to do so. There is, indeed, some ground for the expectation that in certain matters of public policy, such as those relating to the home, the family,

Negative Effects of Woman Suffrage in American Cities.

and personal conduct the new electorate will show itself somewhat more enlightened than the old.

Has the Literacy Test Improved the Electorate?

In any event it may be taken for granted that universal suffrage in American cities has come to stay, and that in other municipalities where it does not now exist, in the cities of Italy and France for example, its adoption will not be long delayed. Assuming this to be the case, are there any ways in which the general plane of electoral intelligence can be improved? The re-imposition of a property qualification, even if it were deemed desirable, is altogether impracticable and hence not worth discussing. Much may be said, however, for the establishment and maintenance of a literacy test, fairly and honestly administered. According to the census figures the percentage of illiteracy in American cities is relatively small, but there are good reasons for believing, as indicated in an earlier chapter, that the number of those who cannot read is far larger than the census returns indicate. The recent action of New York in establishing an educational test for voting provides an example which other states would do well to follow; yet no one should look for radical improvements from this or any other slight modification of the voting requirements. Boston and other cities of Massachusetts have had literacy tests for a generation; but their voters have not shown an intelligence or discrimination superior to those of Baltimore, St. Louis, and other cities in which no such requirement is maintained.

The Fallacy of Taxpaying Requirements.

The advisability of providing that no one shall be permitted to vote unless he or she contributes something, however small, to the municipal treasury is often urged upon the authorities and it is supported by plausible arguments. People who contribute nothing at all to the city's revenue, it is said, should claim no share in determining its expenditure. To give an individual the privilege of voting involves expense; the mere cost of registering voters, printing ballots and holding elections, may amount to a couple of dollars per voter. Ought not everyone to be required, therefore, to pay by way of poll tax or otherwise, at least what it costs the city to maintain him in the exercise of his suffrage? The flaw in all such arguments, however, arises from the failure to realize that everyone who lives in the city is a taxpayer, no matter whether he is actually assessed or not. The man or woman who pays rent pays taxes; so do those who purchase goods of any sort.[1] There is sound reason, accordingly, for the requirement that only residents shall be allowed to vote; but no justification for a policy of excluding all those who do not pay taxes *directly*.

The Suffrage Is a More Important Matter in American Than in European Cities.

The composition of the electorate is a matter of vital importance in all cities, but in American cities particularly. This is because the municipal voter is more frequently called to the polls in America than in Europe, and when called to the polls is given a good deal more to do. The European municipal voter casts his ballot only once a year, or, in some cases only once in three or four years; in America he may be summoned to the polls three or four times per annum—for both primaries and elections, for special elections on bond issues, and so forth. The European voter finds only a few names on his ballot, and from these he selects his choice for a single office only. With the exception of the councilmen there are practically no elective municipal officers in any European city. But in America when the voter goes into the voting booth he is set to a half hour's task in selecting men for various offices, sometimes a score or more of them, from a long list of candidates. In addition he may be asked to register his *yes* or *no* upon a dozen or more referendum questions at the bottom of his ballot. The responsibility imposed upon the average American voter is often greater than he can properly carry without some instruction concerning the candidates and the issues.

Educating the Municipal Voter.

The problem of educating the municipal voter has received very little attention in any country, yet its importance need only be mentioned to be appreciated. In most discussions of civic improvement the necessity of instructing the people, of educating the rank and file to a knowledge of governmental problems, is treated as though it were a mere incidental. Reformers are much more deeply interested in some new type of charter, or in preferential voting, or in the extension of the civil service system. Yet the underlying essential of good city government is an interested and informed community. If the electorate remains inert, uninterested, uninformed, and unguided, it will make scant progress towards enlightened government no matter what mechanism it may use. An ignorant citizenship is a far greater obstacle to effective democracy than antiquated charters, long ballots, or the spoils system. We expect elective officeholders to lend an ear to public opinion; but blank minds cannot express opinions that are worth anybody's heeding. Before a voter can decide, he must know; before he can have an opinion he must have some information. There is a common impression that a real democracy can be established by merely giving voting rights to everybody and letting things take their course.[1] As well might we try to make the world righteous by putting a copy of the Ten Commandments in everyone's hand and calling the job complete. If there were any royal road to either democracy or righteousness the world would have discovered it long ago, for there has been no dearth of men and women in quest of it. The real test of a democracy, as has been well said, is whether it "democs." A democracy is not genuine unless it does what it is fashioned to do, namely, to put the people in full control of public policy. And it will not achieve this end unless the people have been schooled to a reasonable aptitude in seeing things clearly and thinking straight. The public school system is the best friend that democratic institutions possess,—by all means the best. More than half a century ago, when the British Parliament passed the Reform Act of 1867 which widely extended the suffrage, a certain old-fashioned statesman lamented that the rabble had now become "masters of the government." "Very well then," retorted one of his hearers, "educate your masters"! That was the right retort to make. "Until a man has education," says H. G. Wells, "a vote is a useless and dangerous thing for him to possess. The ideal community toward which we move is a community of knowledge and will, replacing a community of faith and obedience."

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[1] See Vol. II, Chap. XLIII.

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[1] This was the belief of the Chartists in England fourscore years ago. They demanded universal suffrage, secret ballots, annual parliaments, the abolition of property qualifications for office, and equality of election districts. According to Thomas Cooper's famous "Chartist Song" all things would be set right if a charter guaranteeing these privileges could be obtained:

> "When the lordly Few shall lose their sway,
> And the Many no more their frown obey;
> Toil, brothers, toil till the work is done,
> Till the struggle is o'er, and the Charter won!"

All the political reforms of Chartism have been won; but the perfection of municipal democracy is even yet afar off.

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The most comprehensive work on the development of the suffrage and its scope in the various countries is Charles Seymour and Donald P. Frary, *How the World Votes* (2 vols., Springfield, Mass., 1918). A bibliography which includes literature relating to the suffrage may be found in Vol. II, pp. 323-344. Various changes have been made in the suffrage laws of European countries, however, since these volumes were published. On the evolution of the suffrage in America the most convenient book is Kirk H. Porter, *History of Suffrage in the United States* (Chicago, 1918). The existing qualifications for voting in the various states are set forth, from time to time, in the *World Almanac*.

CHAPTER XIII

MUNICIPAL NOMINATIONS

European and American Practice—a Contrast.

The process of electing a municipal officer involves, as a rule, two distinct steps known as the nomination and the polling. The first step produces two or more candidates, the second determines the people's choice from among them. Much or little may be made of the nomination as the experience of American and European cities indicates. This, indeed, is a feature in which the political tendencies of the two continents stand in sharp contrast. In the cities of Europe there is, in some cases, no official nomination procedure at all; in others a procedure is established by law but it is of the simplest character.[1] In the United States on the other hand the nominating process has been formalized and elaborated until it has become, in many cities, a complicated and expensive part of the electoral mechanism.

Why Nominations Are Essential.

Now the question may fairly be asked: Why do cities have need for any nomination procedure at all? Why not give the voter a blank ballot and let him write thereon any names he may desire? That was what the laws expected him to do in the old days. But the conditions of today are vastly different. Apart from the fact that universal suffrage places the ballot in the hands of many voters who are unable to write, there is the very practical objection that under such a plan so many different persons would be voted for that no one could secure a majority. Or, as is more likely, the party organizations would take the matter in hand and prepare their own slates of candidates. This, indeed, is what has happened in all European countries where the laws are silent on the matter of nominations. Some sort of nomination procedure is essential under all forms of representative government. If the laws do not prescribe a definite plan, the party organizations will devise one of their own, and they will often do it badly. In this connection a glance at the experience of European cities is worth while.

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[1] It should be mentioned, however, that in some European countries where the system of supplementary elections is in vogue the regular election virtually operates as a process of nomination and is to all intents a primary election. See the author's *Government of European Cities* (New York, 1909), pp. 34-35.

Nominations in French Cities.

In France the laws make no provision for the nomination of candidates at municipal elections, and Frenchmen find great difficulty in understanding the complicated apparatus of conventions and primaries which exists in the United States.[1] The election authorities receive no nomination papers, recognize no candidates and print no ballots. The voter's freedom of choice is altogether unrestricted so far as the laws relating to municipal elections are concerned. But where the laws stand mute, the party organizations always step in. They do exactly what was done in American cities before ward caucuses were abolished and the Australian ballot brought into use. The members of the various party groups in a French city hold their meetings, select their slates of candidates without any legal supervision, print their own ballots with the names of the candidate or candidates, and either distribute them to the voters' homes or hand them around at the entrance to the polling place on the day of the election.[2] The voter, on approaching the polling place, is accosted by a swarm of party agents, their hats decorated with placards bearing the names of their respective candidates. He will have a half dozen ballots thrust into his hands, for party organizations and groups are numerous in every French city. The result is that there are usually four or five times as many candidates as there are places to be filled, and that no one receives a clear majority of the polled votes, in which case a supplementary election becomes necessary. At this supplementary election, which is held a fortnight later, a plurality is sufficient to elect. As a rule, however, the lowest candidates withdraw before this second polling takes place.[1] Thus the actual procedure conforms in effect to the plan of nomination by a direct primary used in many American cities.

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[1] Since 1919, however, a regular nominating procedure has been provided in *national* elections. Prior to this date a candidate for election to the Chamber of Deputies merely announced himself. Now he must file a nomination petition bearing the signatures of at least 100 qualified voters unless he is included in one of the regular party slates. (Law of July 12, 1919, Art. 5, Sec. 5.)

[2] In national elections it is now provided that party organizations may have their ballots officially printed (at their own expense) and sent to the voters free of postage. It is also provided that ballots shall be distributed inside the polling booth by the regular election officials and not by party agents outside. But there is nothing in the law which prevents the private printing of ballots when any party organization or candidate prefers that method.

Nominations in German Cities:

(a) Before the War.

In Prussia before the War there was no statutory provision for the formal nomination of municipal candidates. Oral voting was the rule at all municipal elections; no ballots were printed either by the public authorities or by the party organizations. Nevertheless the various party groups held their meetings on the eve of each election, chose candidates whom they could recommend to their own adherents, and supported these candidates at the polls. The absence of nomination papers and even of printed ballots did not prevent the candidacy of men who were in fact the nominees of their respective party organizations and were known to the voters to be such. Independent candidates, without organized support, had no chance of election.

(b) Since the War.

In all German cities since the War the system of election by universal suffrage and proportional representation has been established. This has involved the formal recognition of each political party's right to place its candidates in the field and has necessitated the use of printed ballots. Each political group now selects its slate of candidates by such methods as it may itself choose to adopt, but the general practice is to do it by means of a party convention. Each party group determines for itself how this convention shall be called, who shall attend it, and how it shall be organized. An official ballot is prepared, bearing the names of the candidates who have been nominated in this way; the names are listed in parallel columns, and every voter is encouraged to vote the straight ticket of his own party group. So far as the methods of nominating slates of candidates are concerned the system bears a considerable resemblance to that which existed in most American cities a quarter of a century ago.

Municipal Nominations in England:

In England a simple plan of nomination procedure is established by law; it is identical at parliamentary and local elections. Although the plan does not contemplate that party organizations will have anything to do with the making of nominations it can be, and has been, adapted to party use. In the English cities the only elective officials are the members of the council and one of the three city auditors. At least seven days before the date set for a municipal election any candidate may place himself in nomination by depositing with the town clerk a nomination paper bearing the signatures of at least ten qualified voters of the borough or ward.[1] Each voter may sign as many nomination papers as there are posts to be filled. Nomination papers bear no party designations; they contain only the name, address, and occupation of the candidate. To obtain ten signatures is so easy that the system debars from candidacy no one who wants to go before the people at the polls. It is true that candidates file more than ten names, sometimes hundreds of them, for the purpose of demonstrating that a large and varied support is behind them; but these additional names are merely for advertising purposes.

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[1] For a full account of this procedure see M. J. Saint-Lager, *Les élections municipales* (7th edition, Paris, 1908).

(a) In Theory.

(b) In Practice.

What actually happens, in most English boroughs is this: On the approach of a municipal election the ward committees meet and talk over the prospects. If the councillor whose term has come to an end is of their own political faith, they urge him to be a candidate for re-election. Otherwise they go to somebody who suits them and ask him to "stand" for the council. On obtaining the candidate's consent in either case they take his nomination papers and get as many signatures on them as they can, especially the signatures of people who are well and favorably known in the neighborhood. Occasionally, of course, a candidacy is self-announced; but this is rather exceptional. Unless he is placed in nomination by Conservative, Liberal, or Labor influences a candidate at English municipal elections has very little chance of being elected.

The English Plan Does Not Increase Candidates.

One might think that this requirement of only ten signatures would serve to multiply candidates and that it might result in loading the ballot with a long list of names. In the United States there is a common impression that when the nominating procedure is simplified the number of candidates is sure to be increased.[2] English cities, however, have had no such experience.

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[1] In the larger boroughs the councillors are elected by wards; the signatures on the nomination papers in such cases must be those of voters within the ward from which the candidate seeks election.

[2] Some years ago an English town clerk said to me: "Why don't you adopt in America some simple system of nominations such as we have here? In Boston, I am told, each candidate for the city council must

The number of names on the ballot is proportionally smaller than in the cities of the United States where the requirements for nomination are much more elaborate. For each municipal office in England there are usually two or three candidates, rarely more. Unopposed elections are not rare although rather less common nowadays than they used to be. To be nominated is so easy that mere candidacy carries no prestige of any sort. What anyone can have for the asking, nobody wants. Candidates do not usually come forward in English municipal campaigns unless they are asked to do so by some group which is politically influential. Of late years the increased strength and activity of the Labor party in English municipalities has frequently compelled the two older party organizations to pool their strength behind a single candidate.

Municipal Nominations in the United States.

In the United States during the past hundred years or more, several methods of nominating candidates for municipal office have been given a trial. Until after the Revolution the methods of nomination were everywhere informal; candidates were brought into the field by their friends and neighbors, or in some cases, by "parlor" caucuses of a few leading citizens. The cities were small; the elective officers were few and unpaid; they had little power and less patronage, so that the office usually had to seek the man. In the colonial boroughs the suffrage was restricted to a small fraction of the population and there were no regular party organizations. Municipal affairs were in the hands of a few prominent citizens.

1. The Informal Caucus.

2. The Regular Party Caucus and the Convention.

But with the growth of the cities in size, and with the more effective organization of the political parties which developed during the first quarter of the nineteenth century, this informal method of nominating municipal candidates was supplanted by the plan of holding, in each city, a regular caucus of the voters

file 2000 signatures. Why aren't ten enough?" I replied by stating the current argument that this would result in overwhelming the ballot with a flood of candidates, which drew the rejoinder that this was an altogether imaginary objection. A moment later, however, he commented upon the American practice of providing on every ballot a blank space in which the voter may write a name in case the candidates who have been regularly nominated and whose names are printed on the ballot do not suit him. "We couldn't do that in England," he said. "Many of the voters would write their own names in that blank space for the fun of seeing themselves listed in the election returns." It was my turn to assure him, from American experience, that his objection was likewise imaginary.

who belonged to the respective political parties. In the larger communities, where it was not convenient to bring all the party adherents together at a single meeting, it became the custom to hold a caucus of the party voters in each ward, and these ward caucuses chose delegates to a party convention for the whole city. Candidates for the city council from each ward were nominated by the ward caucus, while candidates for the mayoralty, or for other city-wide offices, were placed in nomination by the party convention. This method of making municipal nominations, which became general before 1850, continued to be used in most American cities until the end of the nineteenth century.[1]

Abuses Connected with this System.

Although the system of nominating municipal candidates at caucuses and conventions continued in operation for about six decades and was far from being in all cases a failure, there were several weak features connected with it. One serious defect, in its earlier years, lay in the fact that neither the caucus nor the convention was recognized by the laws. Party leaders and party committees called them together when they pleased, often on very short notice. There were no securities for fair play; one faction of the party sometimes got possession of the hall in which the caucus was to be held, and by strong-arm methods kept its opponents outside. Ward leaders learned the art of packing the caucus with thugs and floaters, most of them from other parts of the city. The caucus ballot-box, when there was one, could not be trusted; the tellers were henchmen of the dominant faction who did not hesitate to stuff the box or to falsify the count if the desired ends could not be gained in some other way. It is not without significance that these ward caucuses were frequently held in saloons or in halls directly connected with them. As the laws did not govern the proceedings, the bosses could resort without compunction to bribery, intimidation, and other corrupt practices which would have been severely punishable if indulged in at the regular election. There were a dozen devices, any one of which could be used to "fix" the nominations in the way desired by those who had control of the party machinery.[1] With the growth of patronage in the way of well-paid offices and lucrative contracts the incentive to fraud increased. Large prizes, sometimes involving millions of dollars in the larger cities, hinged upon the capture of a nominating caucus or convention.

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[1] In some cities it was the custom, however, to hold a "citizens' caucus" to which members of all political parties were admitted. This caucus made nominations without reference to the party affiliations of the candidates. A good description of these earlier nominating methods is given in F. W. Dallinger, *Nominations for Elective Office in the United States* (New York, 1897), especially pp. 51-62.

Attempts to Reform the Municipal Caucuses and Conventions.

In due course, accordingly, the laws stepped in to reform the methods by which municipal officers were being nominated. A beginning was made in some cities almost immediately after the Civil War when the repeated triumphs of rings and bosses in New York and other large cities disclosed the dangers of the unregulated convention. This was a new departure in municipal policy, involving, as it did, a recognition of the political party as an integral factor in the process of selecting public officials. Heretofore the work of the party organizations had been ignored by the laws; now it was reluctantly taken in hand and subjected to legal regulation. The initial rules were not elaborate, requiring merely that due notice of the caucuses should be given to the voters, that attendance should be limited to regular members of the party, and that the votes should be honestly counted. This action served to eliminate the worst of the old-time abuses, but it did not stem the tide of popular dissatisfaction which continued to rise during the closing years of the nineteenth century. For even though the caucuses were now fairly conducted, and delegates to conventions honestly chosen, there was still a great deal of underhand manœuvering and manipulation. Invisible influences often dominated the action of these nominating bodies. An *indirect* share in the making of nominations did not satisfy the rank and file of the voters; what they desired was a *direct* share in the work. It is true that the political skill and strategy displayed by nominating conventions were sometimes of a high order; on many occasions the delegates showed themselves able to sink factional differences and to compromise on the nomination of strong, capable, and honest men. But quite as often, and perhaps oftener, the caucuses and conventions permitted themselves to be bossed or enticed into making nominations which were bitterly resented by a large fraction of the party membership. The work of a party convention at its worst was of an astonishingly poor quality.

Out of this clamor and discontent grew the system of nomina-

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[1] *Ibid.*, pp. 95-140.

3. The Direct Primary.

tion by direct action of the voters, commonly known as the direct primary.[1] A direct primary is a preliminary election, established by law and held under the auspices of the public authorities, at which the voters determine who shall be nominated for public office. Regular polling places are designated; official ballots are provided, and the usual safeguards against fraudulent practices are established. During the past twenty or thirty years some form of direct primary has been adopted in the great majority of American cities. To be nominated for any municipal office the first step is to present a petition, signed by a certain small number of qualified voters, asking that one's name be printed on the primary ballot. Then the voters, when the primary is held, make their choice from among the names which have been placed on the ballot in this way.

Types of Direct Primary.

(*a*) The "Closed" Primary.

The direct primary in cities may be "closed," or "open" or "non-partisan." A closed primary is one at which only those who are regularly enrolled as members of a political party, or who are able to meet the prescribed test or party allegiance, may vote. It is sometimes provided, however, that a voter who is not already listed may be enrolled at the polls at the day of the primary election.[2] A separate ballot is provided for the candidates of each political party and the voter is given the ballot of the party to which he belongs. The chief objection to this plan of separate ballots is that it requires every voter to have a definite party allegiance and to disclose this allegiance when he goes to the primary. Many voters do not wish to be tied up with any party organization, and many others are averse to making their party affiliations public. There is also a widespread, although unfounded, impression among the voters that participation in such a party primary carries a moral obligation to vote for the party's candidates at the ensuing election. The result is that many voters stay away from the primary altogether. This objection can be overcome, however, by printing on a single ballot in parallel columns the names of all the candidates for nomination. In some cases the voter is required to keep to a single column, and in a closed primary this rule is quite logical.

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[1] In some cities, however, only the delegates to the convention are chosen at the primary; the nominations for city-wide offices continue to be made by the convention. Where a party platform is to be framed, moreover, the convention facilitates this. Platforms cannot be made up by any action of the voters at a direct primary, but the candidates thus nominated may agree upon a platform, as in state campaigns under state-wide primary laws.

[2] In the case of an enrolled voter who desires to change his enrollment from one party to another there are, in some cases, certain other formalities to be gone through. And it is also provided, in some cities, that the voter shall make a sworn statement of his party allegiance in case the officials have any doubt about it.

(b) The "Open" Primary.

Some cities, on the other hand, use the *open* primary. The voter, on entering the primary booth receives the separate ballots of all the parties (fastened together and folded) or, in some cases, a single ballot with the names of all the respective party candidates printed in parallel columns. He is free to choose any of the ballots, or in the case of the single ballot, to mark for one office in one column and for another office in another column. The objection to this method is that members of one party are enabled to take a hand in nominating the candidates of another party,—a practice which is known as "raiding" the primary.

It sometimes happens, for example, that in one of the parties there is no real contest for the nomination, while a pitched battle between two factions is going on in the other. What better tactics, in such a case, than for the members of the harmonious party to turn the situation to their own advantage by widening the breach in the ranks of its opponents? One way to do this is to help the weaker candidate obtain the nomination and then defeat him at the election. Party leaders do not like the open primary because it occasionally enables nominations to be made in the name of one party when they are in reality the work of the other.

(c) The "Non-partisan" Primary.

The closed and open primaries are alike based upon the principle that nominations should be made by, or in the name of, political parties. The nominees chosen at both closed and open primaries have their names printed on the ballot at the regular elections with the appropriate party designation attached. But there are many who believe that party nominations, party campaigns, and party labels should have no place in municipal elections. In keeping with this belief some cities have established the non-partisan primary as a method of nominating candidates for municipal office.[1] At the non-partisan primary the voter has an unlimited range of choice among the names which appear on his primary ballot without party designations. These names are not placed in party columns, but in alphabetical order or in an order determined by lot. The two candidates who receive the highest vote for any office receive the nomination and fight it out at the ensuing election. The non-partisan primary is nothing more than a qualifying trial in which the weaker candidates, without respect to party, are eliminated so as to prevent an undue cumbering of the ballot at the regular polling. This purpose is now so generally recognized that in some cities, notably in the election of aldermen in Chicago, any candidate who receives at the non-partisan primary a clear majority of all the votes is forthwith declared elected and no subsequent polling is needed.

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[1] The non-partisan primary is used in some state elections as well, particularly in the nomination of candidates for elective judgeships. At mu-

Relation of the Non-partisan Primary to Municipal Party Organization.

Great things were expected from the non-partisan primary by those who fathered it fifteen years or more ago, but it has by no means fulfilled expectations. To some extent, perhaps, it has encouraged independent candidates and diminished the strength of the party machine in the cities, but it has also relieved the party organizations from all formal responsibility for nominations without simultaneously depriving them of their old-time power. Taking party designations off the ballot, whether at primary or regular elections, does not mean that the party organizations go out of business. On the contrary this action only compels them to work more diligently and in more devious ways to control the nomination and choice of municipal officers. Even at non-partisan primaries the successful candidates usually owe their success to the fact that they are supported by their respective party machines; the party allegiance of each candidate is no secret to the voters as a whole. It is broadcast by the newspapers and placarded upon the billboards. The appeal of the candidates, often openly but more often in whisperings, is made to the party traditions and prejudices of the voters. Through the external guise of non-partisanship there often glows the white heat of a fierce party struggle. This is not an argument against the non-partisan primary or the abolition of party designations in cities; it is merely a warning against cherishing the futile hope that partisanship can be extirpated

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nicipal elections it has been used, for the most part, but not exclusively, by cities which have the commission or the city manager form of government.

by any mere change in the mechanism of ascertaining the popular will.[1]

Is the New Method Superior to the Old?

Has the direct primary in any of its forms proved to be an improvement over the old nominating convention? Has it enabled American cities to secure an improvement in the general level of candidacy for public office? These are questions on which a wide divergence of opinion exists; they cannot be answered categorically one way or the other. The old convention plan of nomination was intolerably unsatisfactory in some communities; in others there was no serious fault to be found with it. Much depended upon the political traditions of the city. In some it was fully realized by the politicians that fraud and chicanery in connection with caucuses and conventions did not pay, and they played the game fairly. In others there was no such restraint. The direct primary, in like manner, has shown itself capable of great variation in the results which it secures. There are not a few American cities which managed to secure better elective officials under the old plan than they have been able to get under the new. In general, however, the experience of the cities from one end of the country to the other may fairly be said to have demonstrated the superiority of the primary method if only by a slender margin. Certain it is, at any rate, that the history of nominating methods during the past twenty years has demonstrated anew the old lesson that while the adoption of some new device may serve to diminish existing evils, it increases others, so that in the end it is not always easy to tell whether the net result is a gain or a loss.

Merits of the Direct Primary.

The direct primary has undoubtedly impaired the strength of party organizations in cities, even if it has not proved to be the knock-out blow that was expected. It has to some extent encouraged independent candidacies; it has induced the less partisan elements among the voters to take a greater interest in the nomination of officials. There can be little doubt that the moral effect of the direct primary system upon public officials has been wholesome. They understand that it is not enough to curry favor with a few party leaders and to be accounted "regular" by those who control the party machine. The support of the machine is a great help in securing a renomination no doubt; but it does not always turn the scale. The direct primary sets up a court of popular appeal against the decisions of the party leaders made behind closed doors. There are times when these leaders, by reason of popular indifference, are able to put their own slate of handpicked candidates through the primary; but this they certainly cannot do year in and year out. At intervals voters will rebel and take the reins into their own hands, thus making the leaders more wary until the lesson has been forgotten. The voters, when they make up their minds to assert themselves, may even dethrone the existing ward and city leaders, for the party committees are chosen on the primary ballot.[1]

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[1] For a further discussion of this matter see the article on "Non-Partisan Nominations and Elections" by R. E. Cushman, in the *Annals of the American Academy of Political and Social Science,* March, 1923, pp. 83-96.

The Primary's Defects.

But there are practical disadvantages connected with the direct primary in whatever form it may be used. It has weakened the party organizations as was said a moment ago; but this is not necessarily an achievement to be praised.[2] If political parties are essential to the proper working of all popular government, as this book endeavors to prove, and if party organizations must be strong and well-disciplined in order to perform their functions—then it stands to reason that we can hardly hope to gain much advantage by weakening them. Men sometimes speak of "breaking down the party system" as though destruction were in itself a consummation devoutly to be wished; but they do not find it easy to explain how the work now performed by political parties would be accomplished if parties ceased to exist.

The Expensiveness of the Primary System.

It is admitted on all hands that the use of the direct primary has greatly increased the expense of a nomination campaign. The old city conventions were made up of delegates who knew all about the contestants; they did not have to be educated to the merits and failings of each. But the voters who now select the nominees at a direct primary start with relatively little knowledge of the various aspirants, many of them with no knowledge at all. Hence the candidate who takes the field without a strong personal or party following must make himself known to the people. He must advertise himself, get himself into the newspaper headlines, tour the city nightly with a phalanx of motor cars, keep a corps of clerks busy addressing circulars, and use all the arts of *réclames* raised to the *n*th power. Under such circumstances a great advantage inures to the man who can make the most successful publicity campaign. And the acquisition of political publicity nowadays is largely a matter of spending money. The man who is willing to spend a dollar per voter can make his name a household word (for a week or two) in every nook and corner of the city. So plainly has it been demonstrated that the spending of money for advertising and for other forms of publicity is a determining factor in primary contests that the laws are placing limits upon the amount of money which may be expended in this way. Such restrictions, however, are rarely effective, since the laws do not reach those expenditures which a candidate's friends may make on his behalf. It has been proposed, therefore, that information concerning all aspirants for the nomination should be officially given to the voters, either by printing a brief statement below the name of each on the ballot or by sending to every voter a pamphlet, printed and mailed at the public expense.

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[1] A good defense of the direct primary may be found in C. E. Merriam's article on "Nominating Systems" in *Ibid.*, pp. 1-10.

[2] President A. Lawrence Lowell, in his *Public Opinion in War and Peace* (Cambridge, 1923), pp. 215-216, calls attention to the way in which rival factions within the same party denounce each other in the primary campaign and are then expected to join in supporting the winner against the nominee of the other party. It is impossible for all this to be done with sincerity.

The Burden on the Electorate.

Not least among the evils of the primary system is the burden which it places upon the electorate. Most of the voters are not interested in the making of nominations, as is proved by the fact that the total vote at the primary is almost invariably far below that polled at the regular election. We are accustomed to speak of primary nominations as having been made "by the people"; they are in fact made by a small fraction of the people, and mainly by those who are actively interested in politics—including all the city employees and their friends. The same thing was true, by the way, under the convention system. In some instances an attempt has been made to prevent minority nominations by imposing a requirement that successful candidates must receive at least a certain minimum percentage of the vote; but this merely necessitates, in many cases, the holding of a second primary. No matter what the requirement may be, the party leaders will not cease their efforts to control the nominations, and their persistence will often spell success in doing so. The average voter has other things than politics to engage his attention; he cannot give all his time and thought to the eternal vigilance of thwarting the politicians' schemes.[1] Too many appeals to come out and save the city from this or that impending calamity tend to make him callous; in time he will acquire a feeling of electoral fatigue and stay at home.[2]

Summary.

In spite of its faults, however, the direct primary remains popular in most American cities. It has lost very little ground. The party leaders do not like it, and never have done so; but the rank and file of the voters appreciate the simple fact that it at least brings the nominations potentially under their control. Proposals to restore the old convention system have been greeted with no great popular enthusiasm anywhere. It is unlikely that the convention, in its traditional form, will ever be generally re-established; but it is quite within the bounds of possibility that informal conventions of party delegates will assume the function of recommending candidates to the people and that their recommendations will often be accepted at the primary. They have already done so in many cities and in some of the states.[3] It is also possible that the spread of the proportional representation system in cities will do away with the need for primaries.

3. Nomination by Petition.

Meanwhile a considerable number of cities have adopted the plan of nominating candidates by means of petitions or "nomination papers." The number of signatures is set at a figure sufficiently large to place a damper upon the undue multiplication of candidates. In Boston, for example, candidates for the office of mayor are required to file nomination petitions signed by at least 3000 qualified voters; in the case of candidates for the city council the requirement is 2000 signatures. This arrangement, which has been in operation for nearly fifteen years, has proved to be of doubtful merit.[1] To obtain 3000 signatures is a difficult undertaking for anyone who has no organized support; on the other hand the requirement deters no one who has an organization behind him or who is able to hire canvassers at so much per signature. Such canvassers are regularly hired to go from house to house in quest of names. Many signatures are found to be those of persons who are not qualified voters and hence cannot be counted. Others are those of qualified voters who have already signed more petitions than the law allows. It is estimated that, in order to be sure of 3000 valid signatures, a candidate must file four or five thousand. The task of checking up these thousands of signatures is so great that the work cannot be carefully done in the time allowed.[2]

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[1] Sometimes there is a provision that each candidate may have a statement of say ten or fifteen words printed on the ballot below his name. These statements usually turn out to be pure buncombe: "Candidate So-and-So, honest, capable, efficient, progressive, the people's friend, believer in righteous government, ready to serve the public without fear or favor"; or Candidate Such-and-Such, a man of good judgment and integrity, far-sighted and broad-minded, believer in a square deal for all citizens, if elected will make ——— the finest city in the United States," etc. That is what they usually amount to.

[2] For a good discussion of the primary's merits and defects, see O. C. Hormell, *The Direct Primary, with Special Reference to the State of Maine* (Brunswick, Me., 1922).

[3] See the article on "Pre-Primary Conventions" by Schuyler T. Wallace in the *Annals of the American Academy of Political and Social Science*, March, 1923, pp. 97-104.

Caucuses, conventions, primaries and petitions—all have been tried and found to have serious shortcomings in connection with the making of municipal nominations. The problem of getting the right men to stand for municipal office is still unsolved. Nor is it likely to be solved by amending or elaborating any of the processes mentioned. The more intricate a mechanism, the more likely it is to get out of order. A pre-primary convention, while it might obviate some existing difficulties, would add to the intricacies of the primary system. This being the case, it is not improbable that public opinion will veer gradually to the idea of abolishing the formalities of nomination altogether, allowing any candidate to have his name printed on the ballot at the request of a very small number of voters. There is no practical difficulty in the way of doing this, provided a system of proportional representation is used. One of the outstanding merits of this system, as will be explained in the next chapter, is that it easily disposes of the nomination problem.

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[1] At the mayoralty election of 1910 there were three candidates; in 1914 two, in 1918 four, and in 1922 four. At none of these elections, except that of 1914, did the successful candidate receive a majority of the polled votes. In three instances a candidate who obtained 3000 signatures on his nomination papers received considerably fewer than this number of votes at the election.

[2] At the Boston city council election of 1922 no fewer than thirty-four candidates filed petitions for places on the ballot. Of these only nineteen succeeded in having the necessary 2000 signatures certified as valid.

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CHAPTER XIV

ELECTIONS IN CITIES

The Date of the Municipal Election.

In methods of voting the world displays a great deal of versatility. The cities of different countries disclose no approach to uniformity in the date of holding elections, in the form of ballot used, or in election procedure. In European countries the city elections are not held upon the same day as the national elections. This is necessarily so because the date of the national elections is nowhere definitely fixed; the national legislature may be dissolved and a national election brought on at any time.[1] A separate date is therefore set for city elections. In the chief Continental countries the elections, whether national or municipal, are always held on a Sunday; in England this practice is not followed. France and Italy have been holding Sunday elections for many years; Germany adopted the same plan in 1919. There is a general belief that Sunday is the most convenient day for all classes of voters, and particularly for the workers. In England the date of the borough elections is uniform throughout the kingdom, being fixed in the Municipal Corporations Act as the first day of November in each year. If this date happens to be a Sunday, the polling is held on the day following. In the United States it was at one time the general practice to hold the municipal balloting on the same day as the state or national elections (usually on the Tuesday after the first Monday in November); but for reasons that will be stated in the next paragraph this arrangement was deemed objectionable and in the majority of cities it has now been abandoned, a separate date for the city elections being fixed by the state laws or by the city charter. There is a wide difference among the days chosen in the several states, and sometimes by cities within the same state. November and May, however, are the months in which most of the municipal elections come.

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[1] In France there has been only one such dissolution in more than 50 years, but in England and Italy dissolutions before a parliament has run its full legal term have been frequent. They occasionally took place in Germany under the imperial constitution.

Should National and Local Elections be Held on the Same Day?

In favor of holding local, state, and national elections on the same date there is the argument that this plan is more convenient for everybody. It ensures a large vote, and reduces the cost of elections. But it is objectionable in that it prevents the separation of local from state and national politics. When all the elections are held at the same time the public interest is so largely absorbed by the candidates for national and state offices, and by the wider issues which they represent, that the local candidates and problems are overlooked. The activity of national and state party organizations in municipal politics is certain to be encouraged when an identical election date is used. There is the further objection that a joint election means a long ballot, too long for the average voter to mark with proper discrimination. He will devote most of his attention to the names at the top, the candidates for national and state offices, and will give little of it to the names at the bottom. It is impracticable to have a short ballot under this plan.

The Form of Ballot Used:

1. In German Cities.

The ballots used at city elections in different countries are of widely varying types. In Prussian cities before the war there were no ballots at all. The voter came into the polling room and announced his choice orally; the polling officer thereupon wrote it in a register provided for the purpose. Everyone within earshot could hear. This plan of open-voting was bitterly opposed by the Socialists who regarded it as an agency of intimidation. Many thousands of them stayed away from the polls altogether. Since 1919 voting has been by secret ballot in all the German cities. Slates of candidates are nominated by the different party groups and the names are transmitted to the election authorities who print them side by side on an official ballot. The ballots are counted, after the election, in accordance with the "list plan" of proportional representation.[1]

2. In French Cities.

In French cities no official ballot is provided; the voter may provide his own or he may obtain from any of the various party organizations a printed ballot bearing the names of its candidates.[2] In either case he puts the ballot in an envelope, which the election officials provide, and drops it into the urn which is provided for this purpose. Prior to 1913 no envelopes were provided; the voter merely folded his ballot and gave it to the election officer. The objection to this practice lay in the fact that the ballots, having been prepared independently by the various party groups, differed in size, in shape, and even in the tint of the paper; hence the election officials had no difficulty in telling what each voter was doing and the voting was not really secret at all. The official envelopes are now all alike; the voter goes into the *isolair* or polling compartment, picks out from the various ballots which have been handed to him outside the booth the one that he prefers, puts this ballot in the envelope, seals it up, and deposits it in the urn himself.

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[1] See *below*, p. 282.

[2] There is reason to believe, however, that provision for having ballots officially printed will be made before long in municipal as well as in national elections (see p. 256).

3. In English Cities.

In English cities the names of those candidates who have been regularly nominated are printed on an official ballot which the voters must use.[1] No blank spaces are provided for writing additional names or for using what are known in America as "stickers."[2] The English municipal ballot is a small sheet hardly larger than a dollar bill, and usually containing only two or three names without any party designations. This is because so few municipal offices are filled by popular election and so many by appointment. England is the land of the short ballot *par excellence.* The longest ballot in any English city is shorter than the shortest used in the United States.

4. In American Cities.

The Earliest Methods of Voting.

In the earlier stages of American municipal history several methods of balloting were tried. The first elections in Massachusetts were decided by a show of hands. A little later, some of the New England colonies adopted the "corn and bean ballot" as it was called. The voters were called together and each given one grain of corn and one black bean, or, sometimes, two beans—one white and the other colored. At a town meeting the names of candidates were announced and after each announcement a box was passed around. Grains of corn or white beans counted for him, and black beans against.[1] The process continued until some nominee obtained a majority. This method was not long followed, however; it presently gave way to the use of paper ballots. But in some of the colonies outside New England open voting by a show of hands or by an oral statement at the polls was the practice until the Revolution, and even later.

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[1] Secret ballots were not used in English elections until 1872. They were introduced after a long and bitter struggle in which the Conservatives (as well as some of the Liberals) opposed the plan as "an open avowal of cowardice." Even Gladstone was hostile to the change and declared against it in 1866.

[2] A "sticker" is a slip of gummed paper which is sent to voters through the mails or handed to them outside the polling booth. It bears the name of some candidate who has not been regularly nominated. The voter pastes this sticker on the ballot and marks a cross opposite the name printed on it.

The Party Ballot.

It was not until well into the nineteenth century that written or printed ballots came into use in all the towns and cities of the country. Even then no official ballot was provided. The voters, as is now the case in France, were expected to supply their own ballots; which meant that the party organizations or candidates provided and distributed them to the voters. The ticket of each party was printed on colored paper so that it was readily distinguishable when the voter handed it in. Most voters merely took the ballot of their own party and put it in the box without even reading it.[2] It was allowable, of course, to scratch out one name and write in another, but this was rarely done, and the plan was therefore regarded as lending strong encouragement to "straight" voting. It also facilitated fraudulent practices at the polls, for with so many ballots in circulation some of them were apt to get into the box by underhand methods. The practice of removing some ballots and substituting others during the process of counting, or of slipping two ballots into the box instead of one, was common. This latter fraud was rendered easier by the fact that some of the party organizations printed their ballots on very thin paper. Two or three of these ballots could be folded together to look like one; they would then unfold in dropping to the bottom of the box. To check this sleight-of-hand some cities insisted that each voter write his name on the back of his ballot, a requirement which put an end to what little secrecy there was.

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[1] "In the election of members, which shall be by secret ballot, the law and custom of our forefathers shall be observed, by taking the question with Indian corn and beans; the corn expressing *yeas* and the beans *nays*." *By-laws of the Massachusetts Historical Society*, Chap. i, section 5.

[2] This sometimes led to trickery, the counterfeiting of one party's ballot by its opponents. If the Republicans, for example, prepared a gray ballot with a pink border and a flaming eagle on its reverse side, the strategists of the opposing party would hasten to prepare a fac-simile but with the names of their own candidates inserted. Illiterate voters were frequently buncoed in this way. Both political organizations in New York City practiced this trickery on a large scale.

The Australian Ballot.

To eliminate these various frauds, to relieve the party organizations of what had become a heavy expense to them, to ensure the secrecy of elections, and to encourage the practice of independent voting, the Australian ballot system was brought to the United States about forty years ago. It spread rapidly and is now used almost everywhere.[1] The outstanding feature of the Australian ballot is not its size, shape, or color, but the fact that it is *official.* Unlike the old ballot it is printed at the public expense and is not furnished by the party organizations. The names of the candidates, of whatever political party, are placed upon it either in columns or grouped by offices in alphabetical order. Being provided by the election authorities, these ballots are kept under careful watch in the polling room and are given out one at a time to the voters. And when the election is over every ballot must be accounted for as either marked, spoiled, or unused.

The Use of Party Columns on the Ballot.

The Australian ballot, as used in Australia and in the other British colonies, has always been a short and simple affair. But in the United States, owing to the great multiplication of elective offices, it became long and complicated. This was because the various political parties insisted on nominating candidates for every office and asking the voters to support the entire party ticket. In order to simplify this process of "straight" voting the names were placed in columns with the party symbol at the head of each, and under this symbol a circle or square in which the voter, by marking a single cross, could record his vote for all the candidates in the party list.[2]

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[1] The system was established in Victoria in 1856 but ultimately found adoption by the other Australian states. Louisville was the first American city to try the plan (1888); but Massachusetts adopted it for use in both state and municipal elections almost immediately thereafter. The politicians set up a great hue and cry against its adoption in New York and other states. They denounced the Australian ballot as "un-American," a "penal-colony reform" and an instrument of "kangaroo voting." But in spite of this clamor thirty-two states adopted the ballot in the four years following 1888. At present it is used in the cities of all but two or three states. For a discussion of the whole movement see E. C. Evans, *History of the Australian Ballot System in the United States* (Chicago, 1917).

[2] The symbols are still used to a considerable extent. The party officials are permitted to choose their respective symbols, with the limitation, however, that in most cities they are not permitted to use any official coat-of-arms or flag, or the likeness of any person, or the emblem of any religious or fraternal organization. But they have availed themselves generously of the wide range of choice that remains. The Republicans in most cities use

This made voting a simple task and was of course of great convenience to the illiterate voter; incidentally it placed almost as great a premium on straight voting as the old party ballots had afforded. To vote a straight ticket under this plan is very easy, requiring only a single cross in the circle or square at the head of the appropriate column; but if the voter desires to "split" his ticket it is necessary for him to pick his way through the ballot marking a separate cross after every name. This type of ballot is still used to some extent in American cities but there has been much outcry against it. Municipal reformers have insisted that it plays into the hands of the political machines. Accordingly many cities have secured the abolition of the party columns and now print the names of all candidates, grouped according to offices, in alphabetical order or in an order determined by drawing lots. The names are accompanied by party designations in some cities; in others such designations are omitted.[1] In any event the voter must put a separate cross opposite the name of each candidate for whom he desires to vote.

The Removal of Party Designations from Municipal Ballots.

The removal of party designations from the ballot is far more common in municipal than in state elections. In some respects it is a notable improvement, but it has by no means eliminated the party organizations from municipal politics. These organizations still put forward their candidates, sometimes openly, but more often under cover of some league or

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an eagle; the Democratic vignette is a game cock, or sometimes a five-pointed star. The Prohibitionists have used various suggestive devices, particularly a fountain of water. The party symbol is merely a concession to the illiterate and the ignorant; to the voter who can read it serves no purpose except to take up space on the ballot. The ward bosses have naturally found it useful. On the night before the election, a few years ago, one of them was trying to instruct his followers in the art of voting a straight Republican ticket. Recalling the vignette of an eagle he bellowed at them: "Now don't forget, you fellows, put your cross right under that chicken with the short legs."

[1] It is desirable to have some way of making sure that the voter shall place in the box the identical ballot which is given to him; at the same time it is impractical to put serial numbers on the ballots for that would render them non-secret. In many cities, therefore, the ballot bears a detachable coupon bearing a serial number or the written initials of the poll officer. The latter tears off this coupon before the ballot is placed in the box. Some uniform fac-simile signature or other device is also placed upon the reverse of the ballot in such a way that it will be visible after the paper has been folded.

association formed for the purpose. It does not require a printed label to inform the voters that one candidate is a Republican and the other a Democrat. The newspapers, the campaign circulars, the canvassers, and the speakers all make reference to it. It is quite true, however, that appeals to partisan allegiance are not so effective when the designations are lacking, and it is also true that where there is a long list of candidates the absence of party designations throws the voter on his own resources. He must inform himself about the candidates whose names are on the ballot or vote at random.[1] The political organizations usually take care of this difficulty by sending out specimen ballots marked to their own taste. The voter who desires to be "regular" takes this specimen sheet to the polling booth and marks his ballot as indicated. It cannot be said that the removal of party designations has been a negligible factor in promoting political independence; on the other hand it has certainly failed to detach the masses of the voters from their partisan allegiance at municipal elections.

The Need for a Shorter Municipal Ballot.

The principal weakness of the ballot now used at elections in most American cities is not its form or arrangement but its length. The voter is called upon to do too much. He develops electoral indifference before he finishes what ought to be a five-minute task. Too many positions are filled by election rather than by appointment. It is highly desirable, and even essential, that those city officials who have the ultimate authority to decide matters of general policy shall be directly chosen by the people, but administrative officers whose only function is to carry out the provisions of the law or the instructions of their superiors should not be chosen in this way. Appointment is a far better and an equally democratic method of securing administrative officials. The way to make the ballot short and intelligible is to remove from the category of elective offices those which can better be filled by executive appointment. A ballot is not an effective instrument of popular sovereignty unless it is simple enough for the average voter to use intelligently. When it is so long, so complicated, and so unwieldy that voters are bewildered into voting a straight party ticket it is the party leaders and not the people who are really choosing the city officials. The objection that shortening the ballot is taking government "away from the people" comes from every politician's tongue; but the short ballot has been used in American national elections for over a century without destroying the democracy of the nation's government.

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[1] He will often be influenced by what appears to be the racial or religious affiliation of a candidate as indicated by his name. Many voters display a preference for the name that stands first on the list. First place among any group of candidates on the ballot is a considerable asset, particularly if there are many names. For this reason the practice of printing the names in alphabetical priority is open to criticism as being unjust to those whose names happen to be far down. A much fairer plan is to rotate the names so that every candidate will have first place on an equal number of ballots.

How Voters Often Spoil Their Ballots.

Long ballots are easy to spoil, hence the invalid ballots at an American city election sometimes amount to three or four per cent of the total. The laws relating to the methods of marking the ballot are very strict and their provisions are sometimes mandatory. Election officials, in deciding whether a ballot is spoiled in whole or in part, are governed by these legal requirements, and so are the courts when controversies come before them. The inspectors who count the ballots have no alternative but to throw out those which fail to comply with the requirements. If the laws provide, for example, that the voter shall place a cross *after* the name of the candidate it is not permissible to count a ballot where the cross has been marked before the name. But if the laws merely stipulate that the cross shall be placed *opposite* the name, it can be counted whether set before or after. The plain intent of the voter must always be regarded if this intent is not expressed in a way which is clearly at variance with the law. Voters must not be disfranchised on technicalities; but a specific legal requirement is not a technicality. The presumption is always in favor of counting a disputed ballot; the burden of proof is upon those who claim that it ought not to be counted.

The words "mark a cross" ought to be clear enough, yet the question of what is or is not a cross has given rise to endless controversies at the polls and before the courts.[1] The dictionaries define a cross as the intersection of two lines, but courts have usually held that any mark which the voter apparently intended to be a cross must be accepted even though it may come far from compliance with this definition. A line or a check-mark will usually do. The ballot will not be counted if the mark, in lieu of a cross, is clearly of the nature of an identifying device; but what constitutes an identification mark is a matter for local determination. The voter who signs or initials his ballot renders it void, of course, for he thereby contravenes the requirement that ballots shall be secret; but what of the voter who draws on his ballot a skull-and-cross-bones, or who marks a cross after the name of one candidate and writes "no good" after the name of another? What of the voter who marks his crosses in red ink after the name of each Socialist candidate? Are such things mere eccentricities or are they to be construed as identifying devices?

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[1] For a digest of the decisions see E. C. Evans, *History of the Australian Ballot System*, pp. 66-68. In view of these numerous controversies over so simple a mark as a cross one can imagine what will happen if the voters, under a system of proportional representation, are required to indicate their choices by using figures 1, 2, 3, 4, 5, etc.

Voting Machines.

In many cities of the United States the experiment of permitting the voter to record his choice by means of a voting machine has been tried with varying degrees of success. A voting machine looks something like a magnified cash register. The keys bear the names of the various candidates; the voter steps behind a curtain and presses one key after another. The mechanism is so arranged that a voter cannot press two keys for the same office. The voting machine plan has some advantages in that it saves the trouble and expense of printing ballots; it eliminates spoiled ballots; it prevents any tampering with the votes; and it ensures an accurate count. On the other hand the machines are expensive both to install and to maintain, particularly when several machines are needed for each polling place. Like all other complicated mechanisms, moreover, they get out of order, and when they do this on election day it makes a bad mess of things. It is doubtful whether machines will ever supplant printed ballots.

The Preferential Ballot.

An inherent defect of the ordinary ballot is that it does not allow the voter to indicate more than a single choice for each vacancy. If there are five candidates for the office of mayor, let us say, the voter may mark his ballot for one of them only. He is not permitted to indicate his second choice, or his third choice, among the five. One result of this is that the successful candidate, whenever there are more than two, may be the choice of a small minority. To circumvent this danger of minority control a system of "preferential voting" has been devised and is used in some American cities.[1] On a preferential ballot the voter is asked to indicate, in columns provided for the purpose, not only his first but his second and third choices among the various candidates. The names of those candidates whom the voter does not want to support are left unmarked. In counting preferential ballots any candidate who obtains a clear majority of first choices is declared elected. But if no candidate obtains a majority of first choices, the second choices are added to the first choices and if the two totals combined give any candidate a majority he is declared elected. In like manner the third choices are resorted to if necessary.[2] The candidate elected by the preferential system is thus the choice of a majority in all cases, not the first choice necessarily or even the second, but one whom a majority of the voters have indicated willingness to support. The system enables the city to do away with primaries and other cumbersome methods of nomination. The chief practical objection to the preferential system is that many voters refrain from indicating anything more than their first choice. This tends to make the plan unworkable.[3]

Preferential voting is sometimes confused with proportional representation, but the two are altogether different. The former merely aims to prevent the election of any candidate for any office who is inacceptable to a majority of the voters; the latter provides a plan whereby the majority is prevented from electing all the officials when there are several to be chosen, and the minority is enabled to obtain its due share of representation. Preferential voting can be used in the election of a mayor or any other single officer; but proportional representation can only be used when three or more persons are to be chosen to the same office at the same election, as, for example, when three councilmen are to be chosen from a ward. The principle of asking the voter to indicate a series of choices, rather than a single choice, is the same in both cases; but the process of counting the votes is altogether different. Counting preferential ballots is a relatively simple task compared to the counting of ballots in accordance with the plan of proportional representation.

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[1] The plan was first given a trial in Grand Junction, Colorado, but many other cities (including Spokane, Duluth, Denver, Atlantic City, Trenton, Toledo, and San Francisco) have since adopted it. In the case of Duluth the plan was almost immediately declared unconstitutional by the courts and abandoned. Cleveland used the preferential ballot for some years but has now replaced it with a system of proportional representation.

[2] For a description of the methods used, with illustrative ballots, see the *Bulletins for the Massachusetts Constitutional Convention*, No. 27 (Boston, 1917). A short bibliography on preferential voting may be found at the end of this bulletin.

[3] It is very difficult to make the average voter realize that marking his ballot for a second or third choice will not militate against the election of his first choice.

Proportional Representation.

Proportional representation may be defined as a plan of choosing representatives in such way that all considerable groups of voters will be represented in proportion to their voting strength. Several such schemes have been devised and are used in various countries.[1] These differ in their details but the fundamental principle is in all cases the same, namely, that representatives should be chosen by "quotas" of voters rather than by wards, or districts, or other geographical areas.[2] Under any system of geographical representation there are bound to be groups of voters whose numbers entitle them to one or more representatives but who fail to elect any. There is no unity of political, social, or economic sentiment in a ward or in a district, much less in a city as a whole. Men and women who live in neighboring houses or apartments may have widely different views on public questions. Yet those who happen to be in a minority, even though they form a large minority, will probably get no representation at all so long as the ordinary process of electing officials is used. The majority will elect its entire slate. "Representative" government, if it means what the term implies, ought to represent not merely the majority but all elements in proportion to their numerical strength. If the Socialists form one-ninth of the voting population, they ought to have one councilman in a city council of nine members; the same is true of any element that holds definite views on public questions, for example, on municipal ownership or the single tax. The aim of proportional representation is to carry this doctrine into practice.

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[1] In one form or another proportional representation is used in French, Belgian and Italian *national* elections, at all elections in Germany, and at certain elections in Switzerland, Sweden, Denmark, Australia, and Ireland.

[2] Proportional representation should also be distinguished from *limited voting* and *cumulative voting*. Under the limited voting plan a voter is permitted to mark his ballot only for some smaller number of candidates than there are places to be filled. For example, if seven councilmen are to be chosen by the electorate of the city at large, each voter might be permitted to vote for not more than four. The outcome will very likely be that the strongest party would elect four councilmen and the next strongest three. This gives a certain amount of *minority* representation, but does not ensure *proportional* representation. *Cumulative voting* is an arrangement under which each voter is given as many votes as there are candidates to be elected but is permitted to allot his votes as he pleases. Thus, if three councilmen are to be elected, the voter will have three votes. He may give all three votes to one candidate; or two votes to one candidate and one vote to another; or one vote to each of three candidates. This plan also gives reasonable assurance of minority representation, because the weaker party will concentrate its votes upon one candidate, but the usual outcome is that the majority, whatever its strength, will have twice as many representatives as the minority. It does not, therefore, ensure proportional representation. This plan is used in electing members of the lower branch of the state legislature in Illinois, but is not regarded as satisfactory.

The "List" Plan.

The type of proportional representation commonly used in European countries is called the "list" plan. It is based upon the assumption that nominations will be made in slates or lists by the various party organizations and that most of the voters will vote a straight ticket. In counting the ballots each party is entitled to a number of seats proportional to the total vote for all the candidates on its list, and in filling these seats the candidates are taken from each slate in the order of the number of votes received.[1] No provision is made under the list system for transferring votes from one candidate or slate to another. By reason of its close affiliation with party nominations and party slates the list plan does not appeal to the American reformer for use in municipal elections.

The "Hare" Plan.

In American cities a different scheme of proportional representation, known as the Hare plan, has been making some headway in recent years.[2] This system is not easy to explain in a few words but the usual procedure may be outlined as follows: First, the names of all candidates are printed on the ballot, not in lists or slates but individually in alphabetical order. The voter indicates his choices by marking the figure 1 after the name of his first choice, the figure 2 after the name of his second choice, and so on. Then, when the polls are closed, the election officials compute "the quota," in other words the minimum number of votes needed to elect a candidate. This they do by dividing into the total number of valid votes cast the number of places to be filled, plus one, and taking the next largest whole number. For example, let us suppose that 10,000 votes have been cast and that there are seven candidates to be elected. Ten thousand divided by eight (seven plus one) is 1250 and any candidate who receives 1251 first-choice votes is declared elected. If such candidate, however, has more votes than enough to fill his quota, the surplus votes are distributed (in accordance with the indicated second-choices) among candidates whose quotas have not been filled. If enough candidates are not elected by this process, the candidate with the smallest number of first choices is then dropped and his votes are distributed in the same way. This process of elimination and distribution goes on until enough candidates have filled their quotas or until the successive eliminations have left no more than enough to fill the vacant positions.

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[1] An illustration of the way in which the plan works may be found in F. A. Ogg's *The Governments of Europe* (revised ed., New York, 1920), pp. 425-427.

[2] Its first actual trial in any American city was at Ashtabula, Ohio, in 1915. Since that date several other cities have adopted it. Provision for its use is contained in the new charter of Cleveland. The Hare plan is sometimes called the "single transferable vote" system.

Is the Plan Too Complicated?

This plan of proportional representation is not a model of simplicity, of course, but it is not so difficult to understand as one might at first glance imagine, nor in its actual workings does it present any insuperable complications.[1] The requirement that voters shall indicate their choices by using figures will inevitably lead to disputes as to whether a certain mark is intended to be a 3 or a 5, a 7 or a 9. When the number of candidates is not too large it is practicable to place parallel columns on the ballot headed "First Choice," "Second Choice" and so on. The voter can then indicate his preference by marking a cross at the appropriate place in each column as he does on a preferential ballot. The voter's difficulties, in any event, are small compared with those involved in counting the ballots and determining the result. There is a certain element of chance in this determination of results but mathematicians have figured that it is very small.

Corrupt Practices at City Elections.

Municipal elections afford more than the usual opportunity for corrupt practices, and various safeguards are everywhere provided against their occurrence. Such corrupt practices include personation, repeating, tampering with the ballots, and bribery. European cities have had very little trouble with the more specific forms of electoral corruption, such as padding the voters' lists, bribery, and illegal voting. Their chief difficulty has been connected with the milder forms of intimidation, including the use of sinister influence by public officials and private employers. In England, bribery and other corrupt practices were common a generation ago, but to a larger extent in parliamentary than in municipal elections. American cities have developed a wider range of election frauds than can be found in any other country. There are various reasons for this. The bitterness of partisan campaigns in the large cities and the heavy stakes which are at issue have been an inspiration to crookedness. The floating character of the population in the crowded wards has facilitated personation and repeating. The appointment of polling officers at the behest of party bosses has often served to destroy the integrity of the ballot box. And it is only within the last twenty or thirty years that sufficiently stringent laws relating to corrupt practices have been provided in America. Illegal registration, bribery, personation, repeating, and tampering with the ballots, are now forbidden under heavy penalties in all American cities but they have not yet been wholly eliminated.[1]

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[1] Pamphlets describing the working of the plan may be had by applying to the Proportional Representation League, Haverford, Pa.

Illegal Practices.

Various other practices, not in themselves wrong, have been made illegal by statute because they are contrary to good public policy and tend to make an election undignified, or unfair, or unnecessarily expensive. Canvassing and the distribution of campaign literature is forbidden within a certain radius of the polling place. Campaign advertisements, according to the laws of some states, must bear the name and address of a qualified voter. Candidates are required to file with the proper authorities a statement of their campaign expenses and it is illegal to spend more than a prescribed sum even for purely legitimate purposes, such as the hiring of halls and the printing of posters. The purpose of these things is not only to render the election a dignified affair, but to give every candidate, rich or poor, as nearly equal a chance as the laws can ensure. These regulations are sometimes evaded, it is true, but on the whole they are well respected both by party organizations and by candidates.

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[1] *Personation* is the offence of voting under a name which is not your own. Voters who have died since the lists were compiled, or who are absent, are sometimes impersonated by men who have no right to vote at all. Vigilance on the part of the election officers helps to prevent impersonation although the officials can hardly be expected to know everyone who comes to the polls. *Repeating* is the offence of voting twice at the same election. To do this a voter must first, by fraudulent means, become enrolled as a voter in two or more precincts or districts. *Ballot-box stuffing* is the practice of putting in the box ballots which have no right to be there. With the Australian ballot the practice is very infrequent. *Ballot-switching* is the placing of marks on ballots, surreptitiously, while the ballots are being counted. A dishonest official, with a small piece of lead under his fingernail, has sometimes been able to spoil or to "switch" ballots by marking additional crosses during the process of counting. *Intimidation* is the offence of influencing a voter's action by threats or wrongful pressure.

Absent Voting.

It frequently happens, in the nature of things, that some voters cannot conveniently be in their own cities on election day. Soldiers and sailors, commercial travelers, railway conductors, engineers and trainmen, fishermen, and students in universities are obvious examples. It has been estimated that in Massachusetts the number of voters who are necessarily absent from their homes on election day averages about thirty thousand. Many others, in order to cast their ballots, are put to considerable expense and inconvenience. Now it has seemed desirable to make some provision whereby those voters may cast their ballots without being actually at the polls on election day, and in some cities this has been done. The usual arrangement is that a voter who expects to be absent must apply, sometime before election date, to a designated official for a ballot. This ballot is then marked by the voter and sealed in an envelope. The envelope is attested before a notary public and deposited with the election officer who sees that it is counted when the other ballots are counted. In some cases blank ballots may be sent by mail to absent voters who request it, and after being marked the ballots are returned by mail before election day.

Compulsory Voting.

Compulsory voting does not exist anywhere in the United States at the present time although it has frequently been proposed. Voting has been made compulsory, however, with legal penalties for failure to vote, in the cities of several foreign countries, notably in Belgium, in Spain, and in New Zealand. The usual procedure is to impose a fine upon every voter who, without good excuse, stays away from the polls on election day, or, for repeated absences, to strike his name off the voters' list altogether. In Belgium this plan has been very successful; the number of registered voters who fail to vote is only about five per cent of the total, which is an astonishingly good showing. In American cities the unpolled vote usually ranges from twenty to thirty per cent of the registered total. It is not at all certain, however, that the low percentage of stay-at-homes in Belgian cities is due to the compulsion. A sound popular tradition rather than the enforcement of penalties is partly responsible for it. In Spain the system of compulsory voting has accomplished very little.

The Pros and Cons of Compulsory Voting.

Compulsory voting rests upon the argument that the right to vote imposes a duty to vote. The citizen must serve on a jury in time of peace and in the army during war whether he likes these forms of public service or not. Why, then, should he be allowed to shirk his duty to vote, a duty which must be performed if democratic government is to survive? If one voter has the right to stay away from the polls, every other voter has the same right. And if all followed this policy a representative form of government could not be maintained. But there is another side to the question. The voter who goes to the polls under compulsion is not likely to mark his ballot with much discrimination, intelligence, or patriotism. Would the votes of such men and women be worth counting? It has been demonstrated by foreign experience that while you can drive an unwilling voter to the polls you cannot compel him to mark his ballot properly. The chief result of compulsory voting in some cities has been to increase the number of blank ballots dropped into the box. It may well be argued that voting is a duty, but it is a duty which ought to be performed from motives of patriotism and not from dread of the penalties. Most citizens do not need compulsion and it is questionable whether forcing others to vote would serve any useful purpose.

Summary.

In order that any system of popular voting may be permanently successful the ballot must be simple, intelligible, and secret. It must not be so long as to bewilder the voter of average intelligence, and it should afford him a reasonable chance to "split" his ballot without running a serious risk of spoiling it. A short ballot is a far more effective instrument of democracy than a long ballot. Another essential is that the polling place shall be adequately safeguarded against fraudulent practices of any sort and that the counting of votes shall be conducted with absolute honesty. A generation ago we used to hear a great deal about fraud and corruption at American elections, particularly at elections in the larger cities. These things are now less prevalent than they used to be. American elections, taking them as a whole, now compare favorably with those of any other country. Parties and candidates try hard to win; they seize every opportunity to gain political advantages over their opponents, and in so doing often travel very close to the line which separates right from wrong; but they usually manage to keep within the letter of the election laws. Transgressions may bring temporary success, but in the long run they do not pay, and the politicians know it.

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CHAPTER XV

THE PARTY SYSTEM IN CITIES

The Psychology of Political Partisanship.

Men and women, whether old or young, prefer to think in groups rather than as individuals. Astonishingly few people manufacture their own opinions. It is so much easier to take opinions ready-made, particularly on public questions. This is not surprising, for most people find sufficient scope for the exercise of their mental apparatus in the task of solving their own private problems. There exists, accordingly, in every community, a group mind, or, indeed, several group minds each of which has opinion-forming processes of its own. People gravitate into one or another of these groups, being impelled thither by the influence of inheritance, environment or some other factor, and thereafter their individual opinions on public questions are in some cases wholly determined, in other cases modified, by virtue of their group affiliations.[1] These groupings, which we call party divisions, arise not only from differences of political belief but to some extent from community of race, religion, occupation, or from geographical propinquity. This is particularly true of party divisions in the large cities. Bodies of voters who are bound together by any of these non-political ties display a tendency towards solidarity in their partisan allegiance.[2]

Parties Are Natural Groups.

Whenever the people are in control of their government, therefore, political parties are certain to be formed. Nowhere in the world has popular government continued for any length of time without political parties. The fundamental reason for this is that whenever any men and women become conscious of common interests they desire to act together. So John Adams was right when he said that political parties began with human nature. Freedom to form opinions and freedom to express them inevitably lead not only to group differences but to group expression. The party process is a natural channel through which this group expression of opinions, ideas, desires, and interests may take place. In a despotism no open differences of opinion on public questions are tolerated and no rival political parties come into being. But in democracies, and even in oligarchies, the gravitation of the people into party groups cannot be prevented. Lines of cleavage will appear, leaders will come forward, organizations will develop, and programs will be formulated. So, although political parties are, as Lord Bryce asserts, "far older than democracy," it is to the growth of democracy that the party system owes its progress and extension.

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[1] For a further discussion see William McDougall, *The Group Mind* (New York, 1920), especially Ch. ii. The subject of group opinion is also dealt with, in President Lowell's *Public Opinion in War and Peace* (Cambridge, 1923), especially Ch. i-iii.

[2] A dscussion of this tendency may be found in C. E. Merriam's *American Party System* (New York, 1922), pp. 1-59.

Their First Aim Is to Win Elections.

All human organizations have motives behind them and from these motives they derive their initial momentum. Every political party has an immediate aim and an ultimate purpose. The immediate aim is to get control of the government; the ultimate purpose is to carry out its own policy by means of this control. To do this the party must nominate candidates for office, raise funds for carrying on the campaign, and work to elect its nominees. It is only by electing their own candidates for office that parties can accomplish the ultimate ends for which they are organized. An army does not exist merely to teach men drill or discipline. Its proximate aim is to win victories. Drill and discipline are merely a means to this end. So with a political party. Its organization, leaders, campaign work, and all other activities have as their immediate aim to win a victory at the polls. Then, when the party has elected its candidates and obtained control of the government, the way is open for the achievement of its ultimate purpose, which is to carry a formulated program into effect.

But the Aim of a Political Party Is Not Altogether Selfish.

Having seen why political parties are formed and what they aim to do, we are now in a position to frame a definition. A political party is a group, made up of men and women who have joined themselves together in order to gain control of the government and thereby to bring into operation a program on which they are assumed to be agreed. The aim of a party is not always so selfish, however, as this definition might imply. Most members of a political party believe that in endeavoring to get control of the government they are promoting the public interest. Their aim is to bring into operation certain policies which they believe will benefit the whole people. All political parties profess the desire to serve the public interest, but in different ways. Accordingly their programs are always couched in terms of general welfare even when they are in fact identical with the interests of a class. It is natural that those who are strongly moved by enthusiasm for the interests of their own group should identify such interests with those of the whole community.

Habit Is An Important Factor in Party Strength.

Although parties are originally motivated to promote a particular policy, they do not go out of existence when their ultimate purpose has been fulfilled. In the fight to achieve their purpose the members of the party have developed unity, traditions and leaders. A momentum has been acquired, wholly apart from that originally supplied. Voters are born into the party and remain in it despite a radical change of purpose and program. The party acquires new ideas and ambitions; it gains some new members and loses some old ones. The mill keeps on turning although new forms of grist are brought to be ground and new workmen guide the wheels. Men and women who reach voting age join one or another of the parties, sometimes because they are attracted by its program or its leaders, but more often because they have been so guided by inheritance or environment. It has been estimated that the proportion of those who inherit their party allegiance is about seventy-five per cent.[1] Heredity is by far the most potent single factor in determining the personnel of a political party. Thus it happens that over long periods of time a party may remain strong in one section of the country and weak in another.

Habit influences people in politics as in everything else. When a man has voted several times with one political party he is not likely to desert it even though the party's program undergoes a change. This tendency to force-of-habit voting is not so conspicuous in the cities as in the rural districts. Home ties are weaker in the city; members of families go out to do for themselves at an earlier age; the points of contact with people of different political opinions are more numerous. In the rural areas the influence of inheritance and of environment usually coincide; in the cities this, very often, is not the case. It is also a fact of some significance that the voters show a greater degree of independence, as a rule, in local than in state or national elections. This, no doubt, is because personalities, as distinct from principles, bulk larger in the field of local politics. In any event it is necessary to qualify the customary statement that party organizations rest upon conscious beliefs in different principles or policies. To a large extent their personnel is the product of inheritance, environment, emotion, habit, or tradition.

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[1] C. E. Merriam, *The American Party System* (New York, 1922), p. 27. Most people gravitate toward one or another party at an early age—long before they are able to base their action upon any clear knowledge of party principles. This initial allegiance may later be shaken but in the majority of cases it endures after voting age has been reached. For a defence of "party loyalty" see W. E. H. Lecky, *The Map of Life* (New York, 1899), pp. 120-135.

Independence as a Political Virtue.

But people do not like to be told this truth, educated people especially. They prefer to believe that their party allegiance is the outcome of a deliberate choice, that they are Democrats by reason of their own desire or Republicans by reason of their own reflection. Many voters take it for granted that independence in politics is a self-evident virtue, like honesty or temperance. They plume themselves upon their possession of it, as though it were a mark of intellectual distinction. But when you hear a man say that he is "keeping an open mind" on the political issues you can be fairly certain that his mind is open at the bottom only,—that things merely go in to drop out again. To become interested is to become partisan in a degree which varies with every voter's temperament.

Are Parties Essential?

Could we get along without party organizations? Perhaps we could, but the process of maintaining a government would have to be carried on very differently if party organizations, or something closely resembling them, did not exist. If you watch an election campaign, you will notice that it consists of a regular series of events. First, there is a stirring of general public discussion about issues and candidates. Various suggestions are put forth to see how public opinion will react upon them. Then, in due course, candidates are nominated and make formal announcement of their respective programs. In national and state campaigns the platforms are made by the party; in city elections the candidates, as a rule, make their own pronouncements. The candidates, together with other speakers, go out and make addresses; pamphlets and circulars are printed and sent to the voters through the mails; meetings and rallies are held in halls and on the street corners; the newspapers feature the issues and personalities; the people are gradually worked up to a more or less intense interest, and, finally, on the day of the election, the decision is placed in their hands. From start to finish the chain of events may cover six months or more, involving a huge amount of work on the part of many individuals, interfering with the normal routine of community life, and usually necessitating a large outlay of money.

If There Were No Parties, Who Would Do the Work?

If there were no party organizations, the course of an election campaign would necessarily have to take a different form. Candidates cannot be nominated without co-operative effort; platforms do not make themselves; the people cannot be stirred to an active interest except by vigorous propaganda conducted through the forum, the press, and a house-to-house canvass. In an age when there are so many counter-attractions pressing their claims upon the public attention in urban communities the electoral interest of the people cannot be aroused without resort to every form of publicity, the more dramatic and picturesque the better. The practical necessity of electoral organization and propaganda has been demonstrated in those cities which have endeavored to oust political parties from participation in their affairs. The only result in such cases is that various organizations with new names, but virtually performing the functions of political parties, are brought into being. Political organizations cannot be abolished so long as there are essential functions for them to perform.

The Functions That Political Parties Perform:

Looking at the process of municipal government there are five useful services which political parties now render. First, they undertake the preliminary sifting of aspirants for public office. It is a current platitude that "the office should seek the man," but that practically never happens. From among the dozens of preliminary candidates who display no overpowering modesty in the advancement of their own personal claims, the party organizations commonly manage to concentrate the public attention on a very few. In this respect they serve as an integral and useful part of the election machinery. Second, the parties (and their candidates) help select the issues of the campaign, or,

1. They Sift the Candidates,

2. Clarify the Issues, and

if the issues have already been brought to the front by the natural course of events, the parties help to clarify them so that the contest between candidates becomes in effect a referendum on questions of municipal policy.[1] Third, the parties rouse public interest by their rallies, their pamphlets, circulars, articles in newspapers, posters, as well as by personal canvassing. This political awakening of the voters is of great importance, because electoral indifference is the besetting sin of an urban democracy. Even after every possible form of publicity has been used it will inevitably be found that two or three municipal voters out of every ten have failed to go to the polls on election day. What would happen if there were no resort to artificial methods of arousing public interest? The methods which the party organizations employ are often crude and superficial; it is true. Not infrequently they embody appeals to race or class prejudice, and to that extent render a negative service to the political education of the people; but on the whole the activities of the party organizations provide a wholesome stimulus to democratic government.

3. Rouse Public Interest.

4. Parties Provide a Chain of Responsibility.

Fourth, the parties provide a chain which holds the various officers of city government to a joint responsibility. Municipal officers are chosen to perform widely different functions. Members of the city council are elected to enact ordinances; mayors and other city officers to administer the affairs of the municipality; and judges to help enforce the ordinances. To get the best results all three groups of public officials must work in harmony. But if each were elected independently, on his own initiative and without any reference to the others, there would be little chance of their working together. When they do work together it is usually because they have been elected by substantially the same elements among the voters. The democratic plan of government functions best when its various organs work in unison. The principle of checks and balances, whatever its value as a safeguard, would be intolerable if it meant that the different branches of the government must regularly assume an attitude of opposition to one another. A common party allegiance is a promoter of municipal co-operation, but it would be far more valuable if it did not sometimes degenerate into official collusion.

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[1] It ought to be pointed out that this function of formulating the issues is shared by other organizations, especially in city campaigns. The chamber of commerce, labor organizations and the various civic associations not infrequently propose action which arouses controversy and figures prominently in the campaign.

Importance of This Fourth Function.

If there were no political parties the responsibility of the public official would be altogether personal and would not endure beyond his term of office. But true responsibility should be collective and continuing. It avails very little as a practical matter to say to a municipal councilman, when his term of office expires: "You have been a disappointment; we will not honor you with re-election." Such a penalty for unfaithfulness is altogether inadequate. Who vouched for this councilman's fitness and fidelity in the first place? It is on them that the public resentment should fall. The political organization thus becomes a bondsman, as it were, for the candidates whom it puts forward. If they make good in public office the party claims the credit; if they fail the party bears the onus. The record of the party is determined by the actions of those whom it places in public office. It must therefore exercise a reasonable amount of circumspection in choosing those for whom it stands sponsor.

5. Parties Help to Bridge the Gulf Between the Citizen and His Government.

Finally, the party organization is equipped to render, and does render, a social service as intermediary between its own members and the governing officials. Any ward leader will readily testify that a large part of his time and energy is given to the adjustment of difficulties between individuals and the various branches of the governmental machinery. Nor is it to be imagined that this activity of the party henchmen consists solely in the obtaining of unwarranted favors, or patronage, or immunity from merited punishment. In many cases it takes the form of protection against private avarice or official oppression. The ward leader and his lieutenants often serve as a buffer between the weak and the helpless on the one hand and the soulless employer, the iron-fisted landlord, or the shyster lawyer on the other. This is especially true in large urban communities where great masses of the population are in ignorance of their rights. To such, the party leaders serve as a sort of legal aid bureau. The party machine is powerful; it is often unscrupulous and corrupt; but it is also approachable, human, and ready at all times to befriend its own people.[1]

The party system has worked less satisfactorily in the cities

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[1] For an argument that political parties do more harm than good see R. Michels, *Political Parties* (N. Y., 1912).

Parties Do Not Function so Well in the Cities as in the State or Nation.

and has developed more flagrant abuses in them than in the states or the nation. This is true not only in the United States but in all European countries, and there are several reasons for it. The division of the people on racial, social, and occupational lines is more acute in the cities than in the rural districts and these cross-cleavages tend to disarrange the strictly partisan alignment. The personality of the party leader counts for more in the cities, and the allegiance of many voters is to him rather than to the party. City politics thus tend to become factional and personal. But the chief reason for the unsatisfactory working of the party system in cities may be found in the fact that the party organizations in municipal politics do not usually stand on their own feet. To the average voter the issues of national politics seem to be fraught with far greater consequence than are those of his own immediate community. National issues and traditions are influential in bringing individuals into the party ranks and in holding them there; local issues and traditions are not. No matter how much self-determination the city may have in moulding the frame of its own government there is no such thing as complete, or nearly complete, municipal home rule in party organization. Everywhere the municipal party is merely a subsidiary. In the cities of Great Britain and the United States there has been a well-defined gravitation into two (or at most three) great groups; in the cities of Continental Europe the group disintegration is carried much farther. But in all alike, it is national rather than local considerations that dictate the party alignment.

The Identity of Party Lines in State and City Campaigns.

It is sometimes assumed that this identification of national, state, and local party lines exists only in the United States, but this assumption is wholly unwarranted. Municipal elections in all European countries are conducted on national party lines; in some of them, indeed, the identification is more complete than in the United States. Occasionally the municipal party organizations, with an eye to strategic advantages, adopt separate designations; in London, for example, they called themselves Moderates and Progressives at a time when the national parties were known as Conservatives (Unionists) and Liberals. But the substantial coincidence in personnel remained despite the change in nomenclature. During the War, by reason of the Coalition, the old lines of demarcation in national politics were temporarily broken down. In municipal elections the same thing happened, although there was no local reason for it. National and local politics became as similar in their disintegration as they used to be in the sharpness of their twofold division.

The Socialist and Labor Parties in Municipal Politics.

In the case of two national parties which have made notable gains in various European countries during recent years a close association of national and local organizations is natural and inevitable. The Socialist party, for example, sees no difference in the fundamental issues as applied to different areas of government; its object is to socialize the media of production in all of them. This single motive controls the party's activities in every field of politics. The Socialist can discern no difference between national and local issues, for there is only one fundamental issue, which is the transformation of individualism into collectivism everywhere. He believes in national ownership of the railroads and in municipal ownership of the street railways—for exactly the same reasons. So also with the Labor party; its principles apply without essential change to both national and local government. These principles are embodied in the program of a central labor organization or general federation; they are intended to be of nation-wide and even of world-wide application. Insofar, therefore, as national parties gravitate toward an economic basis and divide sharply on economic issues we may look for an even greater identity of party lines in nation and municipality.

The Vertical Party Division is Likely to Continue.

And this, today, is the tendency of party divisions everywhere. What we used to call a "political platform" is becoming an economic creed. Politics has become economics. Blocs of voters and of lawmakers whose cohesion rests upon a common economic interest are moulding the political programs in nation, state, and cities alike, and to a steadily increasing extent are disintegrating the strength of the older party organizations. The political party of today is rapidly becoming a composite of groups rather than of individuals. Its problem is to keep these five and twenty jarring economic sects in harmony by means of endless concessions and compromises. In the endeavor to achieve this end it sometimes feels obliged to throw political logic and consistency overboard. The synthesis thus becomes precarious, and the strength of the party bond is weakened. In no country is party allegiance so strong as it used to be. This is true in all fields of politics but especially so in the large American cities. With party lines fading, other divisions come into view. With the broader political issues thrust into the background the temptation to divide on racial, religious, social, or economic lines is very great.[1] Appeals to prejudice take the place of appeals to reason; the campaign becomes a melée of personalities, recriminations, innuendo, and slander. It would be difficult to find a city, the world over, in which the obliteration of party lines has raised local politics to a higher plane.

The Failure to Develop Strong Municipal Parties.

Municipal parties, with no relation to any national or state issues, have appeared in the larger American cities from time to time, but they have usually succumbed in a few years. One reason for this is the absence of significant and permanent issues upon which to build a local party organization. There are no divergences of popular opinion upon the broader questions of municipal policy; everybody professes to agree that the city's affairs should be honestly and economically managed, that good appointments should be made, and so on. But when it comes to determining the specific application of these principles there is no approach to unanimity. Even within the ranks of a single organization these differences of opinion will appear and destroy harmony. This has been the experience, over and over again, of citizens' unions, people's parties, taxpayers' leagues, non-partisan parties, or whatever their names may be. It all goes back to a fundamental fact which is that although parties may owe their origin to issues, they must depend for their subsequent momentum upon habit and tradition. And the trouble is that the problems of municipal government are so continually and rapidly changing that no traditions can easily be formed. A civic program framed today is out of date the day after tomorrow. Municipal parties have other difficulties of a practical character. They are expensive to maintain, and find trouble in making both ends meet, since it is much more difficult to raise funds for local than for national party organizations. This is not because contributors are oblivious to the immediate importance of city government; it is merely that local issues do not stir the patriotic fervor or arouse the enthusiasm of the average citizen to the extent of making him put his hand deeply into his pocket.

Reasons for This Failure.

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[1] Such divisions are in fact taking place in such cities as New York, Chicago and Boston, where racial elements are drawn *en masse* to the support of one side or the other.

Fusion Parties.

As a rule it is easier to put through a program of municipal reform by using one of the regular parties than by creating a separate political organization. This alliance between reform and straight partyism is called "fusion"; and several American cities (notably New York) have given it a repeated trial. But while fusion is the easiest road to success at the polls, it never produces an administration that is genuinely free from political partisanship. The regulars who provide most of the votes insist upon a preponderant share in the fruits of victory. And being well-organized they commonly obtain what they demand. The new administration accordingly takes on the political tint of its dominating personnel and thereby disappoints the reformer whose support at the election was secured by professions of non-partisanship. This *mésalliance* between partyism and non-partisanship, concluded solely for practical purposes, has injected a lot of hypocrisy into American municipal politics. There has been a fusion of forces, but no fusion of ideals, for there can be none.

Municipal Home Rule as Applied to the Party System.

Home rule in city politics is difficult to safeguard. Nevertheless the amount of interference by outside party organizations is steadily diminishing. Several things have lent their aid in this direction. The reduction in the number of elective officers is one of them. Short ballots place the political machine at a disadvantage. Small councils and elective commissions cannot be so easily manipulated as were the ponderous bodies of old. The practice of holding state and municipal elections on separate dates has also been of assistance in securing for the cities a chance to have their campaigns conducted upon local issues. Finally, the spread of civil service reform has reduced the temptation to intermeddling from above. So long as the spoils system was in full operation the state party organizations felt bound to control these lucrative fields of patronage. They needed every ounce of sustenance they could secure. The political machine does not altogether depend upon patronage for its existence; but patronage, from whatever source derived, is a most useful lubricant. Today the number of municipal offices and contracts at the disposal of the victors is much smaller than it used to be, and the interest of the state political leaders in city elections is correspondingly diminished; but the spoils are still considerable in many municipalities, quite enough to keep the interest of the higher-ups from vanishing altogether.

The Methods of Municipal Party Organization.

The methods of party organization in the cities of Europe are very different from those of the United States. The most fundamental difference is this: in European cities the party organizations are nowhere recognized as integral factors in the work of government; and their activities are not subject to strict legal regulation. Party organizations need not conform to a procedure laid down by statute, nor are they subjected by law to the direct control of the party voters. In France, Germany, and Italy the urban party organizations take the form of societies, clubs, and committees which are largely self-organized and include only active politicians in their membership. They are oligarchies controlled by a few leading spirits. There are no caucuses or primaries to afford the voters a means of controlling the party committees. The laws merely ignore them. Nevertheless these self-constituted political cliques select their slates of candidates, give them a party label, and supply them with organized support. No one of these various groups, as a rule, is able to win unaided, hence they are continually forming combinations and alliances which rarely endure beyond a single election. This disintegration and lack of stability explain in themselves the absence of legal regulation. The party groups in European cities are not powerful or permanent enough to necessitate official supervision.

(*a*) In Continental Europe.

(*b*) In England.

In England likewise there is no legal supervision of party organizations. Their work is done informally. In the cities there are associations for each ward. Anyone can join by paying a nominal membership fee, but only a small fraction of the voters ever do so. The English ward association, like the French political club or society, is composed of those who are active in politics. For most purposes the ward committee is the association. Its recommendations are followed, its acts usually ratified without question. The committees, however, are composed of plain citizens, not of professional politicians. There is nothing that could be called a machine. Nowhere in European cities does one find a hierarchy of committees and professional workers subsisting on patronage and the spoils of office.

To understand the organization and work of the political parties in European cities the American student must take a new orientation. He must dismiss from his mind such conceptions as he may have formed from observation of party activities at home. There are some superficial resemblances between European and

American methods, but they are of scant importance and apt to be misleading. The American party system is associated with legal control and with the performance of definite official functions, such as the nomination of candidates. Second, it rests upon an avowedly democratic basis, that is to say the rank and file of the voters potentially control it and can change their party leaders when they wish. Third, the American party system has developed in the cities a comprehensive organization which works with machine-like precision; it is continuously in operation, and is nurtured by public patronage. None of these things hold true in the municipalities of any European country. Put them into the European party system and that system would be entirely transformed; eliminate them in the United States and we would have a party system which no American would recognize.

The Fundamental Differences Between Party Methods in European and American Cities.

The American party system has acquired an astonishing measure of uniformity from coast to coast. The plan of party organization differs little from city to city, far less indeed than does the frame of municipal government. In Philadelphia, for example, the system of party organization is not widely different from that in Boston. The Republican party, as everyone knows, is dominant in the Quaker City. Its unit of organization is the ward. There are forty-eight wards in Philadelphia, each of which is divided into polling-precincts or election districts, there being nearly 1350 of these subdivisions in all. The Republican voters in each precinct elect every year a precinct committee of five members and two delegates. Each of the forty-eight wards has a Republican ward committee made up of these two delegates from each precinct. The size of the ward committee depends, of course, on the number of precincts in the ward, which averages about twenty, so that the ward committees have as many as forty members. Each ward committee chooses its own chairman who becomes *ex officio* the ward leader. Then comes the next step. Each ward committee appoints two delegates to the central city committee which is thus composed of ninety-six members, one of whom is chosen chairman. This city committee has final jurisdiction in all matters affecting the general interests of the party. The whole organization forms a perfect pyramid, therefore, for the city committee has jurisdiction over the ward committees, and the latter have a like authority over the precinct

Uniformity of Party Organization in American Cities.

Republican Organization in Philadelphia.

organizations. Nevertheless the ultimate control of the whole hierarchy is vested in the Republican voters who can, by reconstructing the precinct committees at the primary, force a complete change in the ward and central organizations. In this way the fiction, if not the actuality, of popular control is preserved.

The Democratic Organization in Boston.

In Boston, where the Democrats are in the ascendancy, party organization also takes the ward as its unit. Once a year the enrolled Democrats in each of the twenty-six wards elect a ward committee which contains one member for every two hundred party voters. The ward committee elects its own chairman, and is represented upon the city committee by one delegate, usually the chairman. There are no regular precinct committees, but when the ward chairman is efficient he arranges to place a trusted lieutenant in each of these subdivisions. The city committee, which is thus made up of twenty-six members, chooses its chairman and secretary, both of whom give their whole time to the party during the period of an election campaign and a good deal of it in the intervals between. So far as city politics are concerned, however, the solidarity and discipline of the organization have been greatly weakened by the charter amendments of 1909, which substituted nomination by petition for nomination by party primaries in the case of all elective city offices, took party designations off the ballots, greatly reduced the number of elective positions, lengthened the terms of mayor and councilmen, and laid many effective restrictions upon the distribution of municipal patronage.

The Chicago Plan.

In Chicago there are fifty wards and in each of them the party voters elect a ward committeeman for a four year term. This committeeman appoints a leader or committeeman for each precinct. The fifty ward committeemen, together with some members from municipalities adjoining Chicago, make up the county committee; the ward committeemen meet by themselves when matters affecting Chicago alone are under consideration. As a body they are in charge of the party's interests both during and between election campaigns; but in Chicago as in many other large cities there are factional or personal machines within the party which assume control whenever they can. These machines have their own ward leader who may or may not be identical with the regular ward committeemen.

By common consent the most efficient party machine in the

America's Most Conspicuous Political Machine: Tammany Hall.

Its Origin and Early History.

country is the organization known as Tammany Hall.[1] It is the local organization of the Democratic party for New York County (which includes only the Borough of Manhattan); but it exercises a far-reaching influence upon the party's organization in the city as a whole, and even in the state. Originating in the eighteenth century as a benevolent and fraternal association, it was first known as the Society of St. Tammany. Soon, however, the organization became strongly partisan and anti-Federalist. Aaron Burr was its first prominent leader, and managed to make it a tower of strength to the "Republican" party of his day. When the old Republican party went to pieces and the Jacksonian Democrats obtained their long lease of power, Tammany became a Democratic-Republican organization and it still bears this official title, although it has of course no affiliations with the Republican party of today. It has become so famous, the world over, as a nearly perfect piece of political mechanism that its organization and methods ought to have more than a passing mention.

Its Present Structure.

1. The District General Committee.

2. The District Chairman.

The jurisdiction of Tammany extends over the thirty assembly districts which are included within New York County.[2] In each of these assembly districts the Democratic voters choose at an annual primary a district general committee, the membership of which varies according to the number of voters. The choice is made by election precincts, each precinct choosing its quota of committeemen. This district general committee is the chief party organization in the assembly district.[3] Its chairman, chosen by itself, is the directing figure in its operations. He appoints in every election district or precinct a district captain who is the official agent of the party in the precinct and is responsible for the showing which it makes on election day. This captain assigns party workers in his precinct to their various tasks, as canvassers, watchers at the polls, challengers, or messengers. Each captain receives from the county committee's treasurer a sum of money to cover the expenses of this work, but is not paid for his own services. The captains form the general staff which carries out the instructions of the district central committee. They are an active body and much of Tammany's strength depends upon their work.[1]

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[1] This is, of course, the name of the headquarters; but it is popularly used to personify the organization itself. A full account of the organization may be found in Gustavus Myers, *History of Tammany Hall* (2d edition, New York, 1917).

[2] These are the districts which elect assemblymen to the state legislature at Albany.

[3] The district general committee from outside its own membership also names an auxiliary committee to assist in its general activities, likewise several sub-committees from among its own members. Each district also has its clubs, usually bearing the name of some past or present district leader. These clubs maintain their headquarters the year round. From time to time they provide smokers, banquets, picnics and so on for the members and their friends. At Christmas and on other occasions they also make gifts of food, clothing, shoes or fuel to the poor of the district. But when an election campaign draws near, the activities of these clubs are wholly political.

3. The District Leader or Boss.

But the district chairman, who appoints these captains, is not the district leader, so-called. The latter, who is also chosen by the district general committee, is the district's representative on the executive of the county committee; in addition he makes the various recommendations for appointments to office, apportions whatever patronage may be allotted to his district, and exercises a considerable influence over the selection of the party's candidates. In the practical aspects of political activity the district leader is a much more important personage than the district chairman.

4. The County Committee and Its Executive Committees.

For the whole county there is a county committee ostensibly made up of all members of the thirty district committees sitting together. On paper this is a very ponderous body, numbering more than ten thousand members; but as it holds no regular meetings its unwieldiness constitutes no serious handicap. All its business is done by an executive committee made up of the thirty district leaders, together with some ex-officio members.[2] This executive committee chooses its own chairman; but he is not the county leader, or boss of Tammany Hall. The latter is informally elected by the high lights of the party, whether district leaders or not, and technically is only an ordinary member of the executive committee. But he is by general acquiescence the dominating figure in that body, and his advice, whether on matters of policy or methods, is regularly followed.

5. The County Leader or Boss of Tammany.

Three features in this Tammany organization stand out promi-

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[1] All the precinct captains in each assembly district meet from time to time to discuss plans and to insure thorough co-operation as regards both aims and methods.

[2] This executive committee appoints the various standing committees which also act, within their special fields, on behalf of the dormant county committee.

Some Reflections on Tammany.

nently. First is its ostensibly popular basis in that the voters have ultimate control. But this popular control exists in name only. Occasionally the voters overturn a district committee and oust a district chairman; but a revolt among the members of the party would have to be intense and widespread before it could compel a change at central headquarters. The directing personalities are several stages removed from direct popular responsibility. Second, the organization is cumbrous, complicated, and difficult for the ordinary voter to understand. That is what it is intended to be. The politician likes complexity, the more of it the better. People reverence the mysterious. Finally, the ramifications of the Tammany machine are extraordinarily extensive. In New York City there are about five thousand precincts. Figuring five workers per precinct (which is a very conservative estimate) there are at least 25,000 henchmen on the lowest rung of the ladder. Committeemen, chairmen, leaders, and strategists must total as many more. These 50,000 active agents of the cause form a mobile army of almost irresistible strength when pitted against a far less close-knit opposition. And a great many of them are officeholders, hence their livelihood depends upon the skill with which they can serve the organization.

A Military Analogy.

Everywhere in America the work which the local party organizations are expected to do is much more extensive than in Europe. The relatively long period which intervenes between elections in European cities makes it difficult for the organizations to remain active throughout the interval. The European party workers form a militia, to be called out when the occasion arrives. Their work is concentrated into the month or two which precedes the election. When the balloting is over they go about their own private affairs until the eve of the next election. In America, on the other hand, the workers constitute a regular army, on duty all the time. In America, too, this army of professionals is supplemented by the guerilla bands which leaders organize and put into action on their own hook,—the Colts, the Wide Awakes, the Red Devils, the Tip Carts, the Ballyhoolies, the Hinky Dinks, or whatever they may call themselves. Their principal vocation is politics. If they are incidentally engaged in some form of public or private business it is only because, like other men, they must have sustenance. To such business, however, they can devote only the lesser part of their time, thought, and energy. Primaries and elections,—national, state, and local, —follow each other in such ceaseless round that the organization's work, while it may be more intensive at some times than at others, is never entirely suspended. The play of partisan politics is a continuous performance. It is the thing that thousands of men live by.

Women in City Politics.

Organizations of women voters have been developed in most American cities during the past few years, some of them non-partisan, others mere auxiliaries of the regular party organizations. Practically everywhere women have been accorded the right to serve on party committees; but the practice of electing committeemen at primaries seems to place them at a disadvantage. Male voters attend the primaries in larger proportion and many women voters, when they attend, seem to discriminate against candidates of their own sex. For this reason it is sometimes urged that party committees should be required by law to contain a certain portion of women. The National League of Women Voters maintains a local organization in every city of considerable size; its membership is bi-partisan, but the local organizations occasionally take a stand upon municipal issues which are political in character. The temptation to establish an entirely separate woman's party has been resisted thus far, but it is as yet too early to determine the exact influence which women will ultimately exert upon the party system. There are indications, however, that it will be in the direction of greater electoral independence.

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Further references on certain phases of party organization and activity may be found at the close of Chapter XVI.

In 1915 the New York Public Library issued a 74-page bibliography entitled *Political Parties in the United States*. The more important publications since that date are listed in the quarterly issues of the *American Political Science Review*.

CHAPTER XVI

MUNICIPAL POLITICS AND POLITICIANS

The Work of the Party Organization:

Naturalization Work.

The work of the party organization in American cities runs back to the process of naturalization. Left to their own initiative, a great many aliens would not take the initial step towards citizenship; they would be deterred by the seeming difficulties of the naturalization procedure. So the party workers take them in hand and guide them through. In a well-organized ward it is the practice to make from time to time a careful canvass of all non-citizens, noting the date upon which every alien will become eligible for naturalization. Those who seem likely to be useful recruits are then assisted in getting out their first papers; and when the proper time arrives they are also assisted through the final procedure. The ward leader assigns certain of his lieutenants to see that the necessary forms are filled out and the essential witnesses secured. Everything is done to impress upon the new citizen his obligation to the party which has done so much on his behalf.

Registration Work.

In cities where voters' lists are compiled wholly or in part by means of personal registration it becomes necessary to provide some stimulus to enrolment. Without urging, large numbers of men and women would remain unenrolled. It is the work of the party organization to see that this does not happen within its own ranks. The call to registration is sounded through the newspapers, or by posters and placards, or in some cases by mailing notices directly to all those whose names are on the ward lists. Sometimes a personal canvass is made, but only when a desperate fight is impending. Obviously a voter is worth nothing to his party unless he is registered. In wards or cities where the two major parties are nearly equal in political strength the outcome of the election often hinges upon the effectiveness of the work done at the registration booths. And this, in some measure, depends upon the amount of money in the party's war chest. Volunteer helpers are useful in their way; but it is the experienced, paid worker who gets the largest results in the shortest space of time.

The Nomination of Candidates.

The work of party organizations in nominating candidates varies with the nature of the nomination procedure established by law. Where the direct primary is used the party leaders and committees are supposed to keep their hands off, leaving the voters free to decide who the party's nominees shall be. But neither the leaders nor the committees, as a rule, conform to this theory. On the contrary there are all sorts of manœuverings at city and ward headquarters, consultations among the leaders, the pulling of multifarious wires, and divers other preliminaries which usually result in the framing of an "organization" slate. Sometimes there is a public announcement and endorsement, but good strategy often demands that the selection of this pre-primary slate shall not be made too openly lest the disappointed element launch an appeal to the voters against the "autocracy" of the leaders and foment a revolt against the practice of "hand picking" candidates. So the machine runs silently, attracting as little public attention as possible. The word is merely passed from mouth to mouth among the faithful. Pre-primary slates are almost always concocted by the party leaders or bosses no matter how complete the outward semblance of neutrality may be. The leaders officially announce that they are keeping their hands off, and that the people must do their own choosing; meanwhile they leave nothing undone to place their own selections at the top of the primary poll. Thus the actual influence of the party leaders and committees in determining who shall have the nominations under the direct primary system is nearly (if not quite) as great as it was in the old convention days. In this respect the primary has failed to function as its proponents expected.

Why the Party Leaders Insist on Controling the Nominations.

One reason for this insistent effort of the party leaders to control the nominations is to be found in the obvious desirability of having a candidate whose personality and public record are in tune with the party's program. This program is not framed by the voters; it cannot be. Principles and policies are formulated by the leaders, the strategists, and the bosses. Now if the voters are given no guidance in the choice of candidates at the primary, they are likely to provide the party with a standard-bearer who neither personifies its program nor possesses the confidence of its leaders. They may choose someone who is not ready to play the game as the leaders think it should be played. This is a considerable handicap in winning an election. It is true, of course, that at municipal elections there are no elaborate programs or platforms such as appear in state and national campaigns, but the respective party organizations are nevertheless committed to rival positions on certain definite local issues. One party in city elections will sometimes oppose a proposition for the sole reason that the other side supports it. The party leaders will not rally whole-heartedly to the aid of a candidate, even though he bear the official party label, if his personal views, his public record and his ideals as a politician are unsatisfactory to them. A lack of consistency between what the party leaders want and what the candidate is ready to promise will take the ginger out of any campaign. It means that much of the support which the candidate receives will be of a perfunctory sort.

Conducting the Campaign.

In no respect do European and American party activities differ more widely than in the conduct of election campaigns. In all countries, to be sure, it is a fact that thorough organization, hard work, and ample funds conduce to victory at municipal elections. That is true of European and American cities alike. But there is this difference: In older countries, where the municipal system has produced no galaxy of professional politicians (inasmuch as it provides no spoils for rewarding them) the municipal campaigns are conducted by amateurs. They come infrequently, and are of short duration. It is not possible, therefore, to conduct them with that thoroughness which characterizes municipal electioneering in America. Nor is it at all certain that the strange trappings of an American municipal campaign would be appreciated in the cities of Europe. Our aggressive methods would offend their sense of calm. A certain reserve and sense of dignity, which harks back to monarchial days, is associated in Europe with the exercise of popular sovereignty. Brass bands and red fire would help very little to win an election in Bordeaux, Dresden or Milan—the people of these communities would be repelled by the crudeness and inartistry of it all. In America the "hoopla" or "hoorah" type of campaign is partly the result of a pioneer exuberance which has not yet been completely toned down, and partly the outcome of a notion that the new voter, whether native or foreign born, can be convinced in this way

European and American Municipal Campaigns Compared.

that the party is going to win. The African tribes beat their tom-toms and make a great pandemonium before they march to battle, believing that this whets the courage of the faltering, and may even stampede the enemy. Party organizations in America use somewhat analogous tactics, with the same ends in view. They are not now so much given to noisome types of propaganda, however, as they were a generation ago. European campaign methods are mostly of the still-hunt variety, with great stress upon the house-to-house canvass and upon personal appeals to the individual voter.

Rallies and Meetings.

In Europe, especially in England, the mass meeting or rally is used to rouse the voters on the eve of a municipal election, although not to the same extent as in the United States. Everywhere it is ostensibly an appeal to reason, but in fact an appeal to emotions and prejudice. These meetings are patronized, in the main, by those who have already made up their minds, along with a sprinkling of those who have not. They give the voters a chance to see their candidates in the flesh. Monster city-wide gatherings in the interests of municipal candidates, such as are held in American cities, are virtually unknown in Europe because no candidates are chosen by the entire municipal electorate. In no European city is the mayor directly chosen by the people; the councilmen are elected (save in the smaller communities) by wards, districts or arrondissements. Political meetings during a municipal campaign are neighborhood affairs, always held indoors and rarely well attended. In American cities the street-corner rally has become increasingly popular during recent municipal campaigns and bids fair to supplant the older ward-room gatherings. No rent need to be paid for the use of the street corner, which is an important consideration when funds are low and meetings numerous. With twenty or thirty rallies on a single evening the item of hall-rent would bulk large in a list of campaign expenses. Street corner rallies have some other advantages. They do not need to be widely advertised in advance. A bugler and a transparency will soon draw a crowd, including many casual listeners who would not go out of their way to attend an indoor meeting. A candidate can conduct a score or more of these street rallies in a single evening, speaking a few minutes at each and then whirling off to the next.

Street-Corner Rallies.

The practice of addressing the workers in large factories, using

Other Devices for Getting the Ear of the Voter.

the luncheon hour for this purpose, has also become common in the larger cities of the United States and is now regarded as a very effective method of campaigning. Small meetings held in private houses and attended by those voters who live in the immediate neighborhood are rated the best of all. They bring candidates into close personal contact with the voters and enable them to make a more subtle appeal. It is through these little gatherings, recruited as they are by personal invitation, that the smouldering embers of prejudice can be fanned into flame for somebody's political benefit. The candidate can whisper things there which might prove a boomerang if spoken to a large public audience. There are no reporters at these parlor gatherings; the candidate can say what he pleases without fear of reply or contradiction. Mention should also be made of the opportunities afforded by meetings of lodges, labor unions, and societies which candidates utilize for speech-making whenever possible. But the dress parades, torchlight processions, barbecues, political picnics, and other more picturesque performances which featured the American election campaigns of a generation ago are now gradually dropping out of vogue. In municipal campaigns they have virtually disappeared altogether. The politicians believe that they are not worth what they cost. The money, they think, can be better spent in other ways.

Auxiliaries and Clubs.

The most profitable form of expenditure is that which goes for the maintenance of the regular party organization, the standing army of workers. Money must also be used to finance the various auxiliary associations, societies, clubs, and groups which supplement the work of the regular organization and strengthen its weak spots. These auxiliaries may carry over from one campaign to another or they may be pulled together on the approach of the election, disappearing when the polling is over. Political clubs and associations are of various kinds, according to the section of the city in which their activities are carried on. In the business and better residential sections they are mere *ad hoc* bodies, with no social activities, and no regular headquarters. Calling themselves by such names as the Progressive Republican Club, the Business Man's Democratic Association, the Association of Progressive Voters, or what not, their activities consist chiefly in standing sponsor for meetings which they help to organize and in issuing public statements bearing an array of well-known names.[1] In the poorer districts of the large cities, on the other hand, the clubs are often built upon a racial basis, or around the personality of some local leader whose name they bear. Sometimes they are maintained in existence throughout the year; but most of them are improvised at the outset of the campaign and fold their tents when the last ballot has been counted. They are chiefly composed of the younger element among the voters, their nucleus being a group or "gang" of young men who are already acquainted with one another and with the local leader. A place of rendezvous is provided and fitted up, either at the leader's own expense or with funds supplied from the campaign chest. Here the members gather each night, bring their friends along, and listen to the exhortations of minor fry among the leaders, these harangues being given in a style appropriate to the environment. In the old days the usual habitat of the political club was a room over or adjoining a saloon.

The reasons for the existence of these election clubs in American cities are both psychological and practical. The desire of men to be closely associated with their fellows and with a forceful leader, the desire to have a part in an exciting adventure—these are universal traits of human character. Mere membership in a political party does not fully satisfy such aspirations; but the clubs afford an opportunity for making party allegiance concrete and personal. They also provide a school for apprentice politicians, in which the leaders may "try out" the neophytes before giving them places on the regular committees. Being personal organizations and not directly under the control of the regular party officials, the clubs can do various things which the party, as such, dares not do.

The Newspapers in Municipal Campaigns:

Advertising, in its varied forms, plays a large part in municipal campaigning everywhere. The newspapers are in all countries used by political organizations and candidates; they are still the chief agencies for informing the electorate, although other channels of advertising, deemed to be quite as effective or more so, are coming to be largely utilized. There are three ways in which a newspaper may be used to advance the interest of a municipal candidate. First, it will print such advertising as he

(*a*) Paid Advertising.

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[1] These lists of "endorsers" are printed in the newspapers and are deemed to constitute a very effective form of propaganda when they include the names of prominent persons drawn from the various professions and business pursuits.

or his supporters are willing to pay for. This material is prepared by a hired publicity agent at the candidate's headquarters and is carefully adjusted to the clientele of each particular journal. In large American cities, where newspapers in foreign tongues have a big circulation, such journals are always utilized. Their columns often go to the highest bidder. Political advertising in newspapers is always costly, for it must be well-placed and prominently displayed in order to be of much service. In smaller communities, where the advertising rates are moderate, the "display" type of political advertisement is still extensively used by candidates and organizations; but in the great metropolitan journals the cost is now prohibitive. Political advertisements are therefore restricted, for the most part, to the announcement of rallies and other specific information.

(*b*) Editorial Support.

Second, a drive is always made for editorial support. Propaganda on the editorial page, whether open or subtle, probably counts for something, although its importance has usually been overrated. This is proved by the frequency with which candidates are elected in spite of unanimous editorial opposition. In European countries the editorial attitude counts for a great deal more, because editorials are usually signed by some conspicuous journalist. Moreover, they appear on the front page and are much more widely read than here. The support or opposition of a great newspaper, or a string of newspapers such as the Northcliffe press in England or the Stinnes journals in Germany, is a big factor in determining the outcome of an election abroad. There was a time when the same could be said of America but is seems to have gone by. No sagacious observer now bases his prediction as to the outcome of an American municipal election on what he reads in the newspaper editorials. He knows that the editorial page merely reflects the personal views of the editor, or the influence of an established tradition, or a subsidy, or something else not dependable as a mirror of public sentiment.

(*c*) Influence of the News Columns.

Finally, and most influential of all, are the news columns. During an election campaign the newspapers provide a great deal of free publicity for all the candidates by printing summaries of speeches made at rallies, statements issued by rival candidates, charges and counter-charges, claims and predictions of victory, and general comments on the course of the campaign. This news-matter may be neutral and unbiased, more often it is colored to advance the cause of a particular candidate or slate. On the whole, however, the news columns of American journals are fairer towards their opponents than are those of the European press.

Other Publicity Devices.

There are so many other publicity devices nowadays that one can do no more than make mere mention of them. Badges and buttons are supplied to those who will wear them. Banners bearing the names of candidates are stretched across the streets at conspicuous points and transparencies are hung out at night. One rarely sees anything of the sort in Europe. Posters are generously used on both sides of the Atlantic; they are more in evidence here because we have bigger billboards more obtrusively located. The pictures of the candidates, with appropriate slogans which are placed in the shop windows at every American election are rarely seen abroad. The mails are everywhere utilized to some extent but the sending of literature by post is a costly process and appears to be less popular in America than in Europe. This is no doubt because the American voter, especially in the cities, is so deluged with commercial advertising by way of his letter box that he has developed the habit of paying little attention to any of it. The old practice of mailing political literature in an unsealed envelope with a one-cent stamp is now generally regarded as a waste of money; too many of the missives go into the waste basket. To be sure of reaching the voter's eye, campaign literature must have the protective coloration of a personal letter. The motion picture theatres afford an advertising medium of enormous possibilities; and it is safe to predict that these possibilities will soon be more widely used. The marvel is that shrewd politicians have not already devoted to these picture houses a larger share of the attention which they have been bestowing upon the newspapers and the billboards.

The House-to-House Canvass.

The most effective form of municipal campaigning is the personal canvass or house-to-house solicitation of votes. In small communities, or in single wards of a city, this is often done by the candidates themselves. They "heel" the district, going from door to door in quest of votes, and usually asking each voter to sign a pledge card. This is a time-consuming as well as a tiresome process; it must be begun many weeks before the election date. In England the personal canvass figures very largely in municipal campaigns, far more so than in America. This house-to-house visitation is of great value not only as affording a direct approach to the voter but in providing a reliable guide to the trend of public sentiment. In the early stages of the campaign it enables the candidates and the party leaders to obtain an inkling of how the winds are blowing so that they may trim their sails accordingly. Any initial mistakes can thus be corrected; the emphasis can be shifted from one issue to another; weak spots in the program of the party or the candidate can be toned up. Every seasoned political warrior appreciates the great value of a thorough canvass; but the work of making it is prodigious. Without a far-flung organization and a great expenditure of money a complete canvass cannot be carried through in any large city.

Bringing Out the Vote.

The campaign having been brought to a close, the culminating task of the committees and leaders is to see that the full strength of their supporters is brought to the polls on election day. This is primarily the work of the precinct or ward committees, but it is conducted by them under central supervision. The routine, when well handled, is about as follows: For each precinct a list of voters is obtained, and on this list the ward or precinct chairman checks the names of those whose votes can probably be depended upon. Two or more checkers are named to be at the precinct throughout the hours of polling, usually taking turns at their work. The checker's work is to keep tally of all those who vote and to make prompt report of how things are going. This he does at intervals to the ward or city headquarters, as the case may be. He may do it by telephone, but more often the ward leader or one of his lieutenants drives around from precinct to precinct obtaining a report from each checker. To each precinct, moreover, one or more automobiles are assigned, each appropriately placarded. In the early hours of the day these are used to convey such voters as are known to be aged or infirm; later they are sent after the merely forgetful. Towards mid-day it will appear that in some precincts the voters are turning out well, while in other precincts a very small vote is being polled. The ward leader, accordingly, shifts some workers and automobiles from the former to the latter; if his entire ward is running below its normal vote he may call upon city headquarters for more helpers and these will be provided from some other ward where the need is less urgent. One of the marks of good precinct or ward leadership is the polling of a full vote for the party candidates. When a leader fails at this point it is time to replace him.

The Apportionment of Campaign Funds.

It must not be supposed, however, that the foregoing routine is regularly adhered to at all municipal elections or that it works with machine-like precision from top to bottom, from headquarters to ward, and from ward to precinct. In some wards the organization is always more efficient than in others; in some the problem of getting out the vote is much less difficult than in others. The result is that many precincts may be left without any checkers or conveyances at all. A good deal depends upon the degree of public interest that has been worked up and the amount of money available. Many workers volunteer their services, and to some extent automobiles are loaned by members of the party; but the work of getting out the vote is greatly facilitated when money is available to pay for additional helpers and conveyances. Each ward leader, accordingly, receives from the city headquarters a certain allowance for this purpose. The amount depends upon the size of the ward, the influence of the ward leader at headquarters, and the relative opulence of the campaign treasury. The money is distributed a day or two before the election, and the distribution is invariably accompanied by a good deal of grumbling, for the amount is never quite up to expectations.

How Campaign Funds Are Raised.

How is this money obtained? In a large city the amount needed is considerable, running far into the thousands and even into the hundreds of thousands. A mayoralty campaign in New York City costs Tammany at least a million dollars under favorable conditions. In Chicago there are about 2000 precincts; even with an allowance of only one hundred dollars per precinct the outlay would be about $200,000. An aggressive campaign would cost several times that sum. The financing of a municipal campaign becomes, therefore, one of the chief concerns of the candidate, his committees, and his party organization. It must be looked out for in advance. So each organization has a treasurer, and usually a finance committee to assist him. At an early stage in the campaign this finance committee, whose members are chosen for their assumed proficiency in money-raising, send out a circular to all those who are regarded as potential contributors. The list of those who have given something in previous campaigns is used, new names being added as suggested by members of the committee. These circulars bring in a variable amount, depending upon the degree of interest in the election. But the response to mere circulars is never sufficient, and follow-up letters have then to be sent out. These letters are more direct and more personal than the circulars, especially when they are signed by some member of the committee who is personally known to the prospective contributor. Finally, the method of personal solicitation is used. Members of the finance committee, or the treasurer, or somebody else connected with the organization will telephone to those whose contributions have not arrived, or will go to see them. In a close campaign the money-raising effort takes on all the hustle of a "drive," with no let-up in it until election day comes.

Where the Money Comes From.

Contributions, large and small, come from a variety of sources. The candidates themselves, or their close friends, are supposed to head the list with substantial donations, provided they can afford to do so. In the process of picking and grooming its candidates the machine never disregards their relative opulence. Before they warm up to any man's candidacy the politicians usually want to know how he rates financially. Can he finance his own campaign, in whole or in part? Has he well-to-do friends who will see him through? Or, must the organization assume the laborious task of raising funds for him? These are questions which come to the front of the politician's mind when the names of various aspirants are suggested in the first instance. The man with a fat wallet has a marked advantage over all others because the party leaders like to have the problem of finance off their minds. It leaves them more time for other campaign work.

But neither the candidate nor his personal friends can ordinarily provide the entire amount needed. Other sources must therefore be tapped. Officeholders who have been elected or appointed by the influence of the organization are often assessed a percentage of their salaries. The civil service laws commonly forbid this, but such laws are circumvented by merely calling for a "voluntary" contribution which officials know to be in fact a demand. To the spoilsman in office an invitation from the party leaders is an invitation from royalty, not to be declined. Contributions are also solicited, and come regularly, from contractors and others who have dealings with the city or expect to have. Public utility companies were fair game in the old days;

they were virtually blackjacked into giving large sums for self-protection, sometimes to both parties or candidates in order that they might be safe whoever won. The laws now forbid such contributions in most American cities, but here again evasion is not difficult. Some official of the company, or someone unofficially connected with it, makes the contribution in his own name. The amount is charged on the company books as advertising, legal expenses, promotion of business, charity, or anything that looks unsuspicious. Finally, the list of campaign contributors will include many men and women who give in varying amounts from varied motives. Some are inspired by the desire to promote what they believe to be the well-being of the community. Others are actuated in whole or in part by considerations of self-interest which may or may not be apparent on the surface. Men act from mixed motives, especially in politics. Many contributions are actuated by obligations or aspirations which are known only to the contributors.

The Limitation of Campaign Expenses.

The laws have endeavored, in recent years, to place a curb upon excessive campaign expenditures in two ways, first by requiring that lists of contributors be published, and, second, by fixing the maximum amount which a candidate (or in some cases his organization) may spend. These laws have not proved very effective, partly because they are indifferently enforced, and partly because they do not reach those roundabout methods of raising and spending money which all political wiseacres know how to use. No legal restrictions, for example, can prevent a candidate's friends from spending money, directly out of their own pockets, in his behalf. The amounts expended in this way may be far in excess of what is disbursed through the regular channels.

The Party and the Distribution of the Spoils.

When the election is over, there remains the final function of the party organization. This is the duty of "advising" the successful candidates after they are installed in office. The leaders expect to be consulted in all matters of official policy, such as appointments and the distribution of patronage. To some extent the candidates may be pledged in advance; it is rarely indeed that any mayor or councilman goes into office without some pledges, expressed or implied. In any event the party leaders and committees expect "recognition," which means that they want to be consulted in all matters directly connected with the party's welfare. The way in which this recognition shall be given is sometimes determined before the election by an informal understanding between the candidate and his leading supporters. Anyhow the man who owes his election to the party, and who expects further advancement from it, must strive to keep the organization in a satisfied frame of mind. He may follow his own judgment as to how this can best be done, but he will usually find his path smoother if he defers to the advice of the organization on all important questions of appointments and patronage.

The Division of Labor in Party Organizations.

Political activities require division of labor. The varied responsibilities of an organization must be distributed into many hands. How is all this work of getting the voters registered, the candidates nominated, the campaign conducted and the vote brought out on election day—how is it all apportioned among the various party officials and committees? The registration of voters is the work of the ward committees, but the expenses are usually borne, in part at least, by the central city headquarters. The general conduct of the campaign is in the hands of the city committee which provides the chief speakers, arranges for the larger rallies, and has charge of the publicity work. These various functions are ordinarily performed through sub-committees which include in their membership some men and women who are not regularly affiliated with the party organization. As a matter of practice the candidates for the mayoralty usually build up personal organizations of their own which work along with the regular committees or may in large measure supplant them. This is particularly true where the non-partisan primary is in use and party designations abolished. These personal machines often prove very efficient. In any case the work of general direction is always assumed by a relatively few men,—the acknowledged party leaders or close friends of the candidate,—who make up a board of strategy or general staff. The ward committee, in addition to its work of getting the voters registered, is responsible for arranging the minor rallies, for the house-to-house canvass, and for supervising the work at the precincts on election day. The precinct committee (or precinct captain) has only one specific duty, that of getting out the vote, but this work requires a thorough acquaintance with the neighborhood and hence really covers the entire year. From one election to another the ward committees remain intact and may be called together to discuss questions of patronage, but in most cases the ward chairman or leader settles such questions on his own responsibility.

Methods Are Modified by Local Conditions.

The foregoing outline is not a description of party activities and the allocation of party functions in any one American city. It is a composite, and merely indicates the general lines that are commonly followed. In smaller cities there are no precinct committees; in some of the larger communities the assembly district rather than the ward is the unit of party organization; and in a few places the county rather than the city forms the area over which the central committee has jurisdiction. This is the case, for example, in New York and Chicago. Methods are everywhere modified by local conditions, and in any event the established traditions of party organization vary considerably in different parts of the country. Once established they do not easily change. The party system in every large municipality is a topic for study on the ground; it can never be taken for granted that the details will be the same in any two American communities, or, indeed, in the same community at two successive elections.

The "Machine."

The more prominent workers in these various committees and clubs, together with various leaders and officeholders who occupy no designated place in the party hierarchy, are commonly known as the "machine." The institution is so called because all its parts work so smoothly together in the effort to obtain the desired end, which is to place and keep the party in control of the government. The party *organization* consists of all its officials, from the precinct committeemen to the city or county chairman; while the *machine* is made up of the controlling element in the organization.

Usually it is a personal creation, built up around some dominating leader. When the machine gets control of affairs the party organization ceases to be representative of the people who compose it, and irresponsible party government is the outcome. The party's strength becomes a marketable asset to be disposed of by a few leaders for their own advantage. Things are often done in the name of the party which are in fact the work of the machine only. The relation of the two is not altogether unlike that of the Privy Council and the Cabinet in England.

The latter, which has no legal status, speaks in the name of the former. Machines do not exist in all American cities but only in some of them. Where they do exist they are stronger at some times than at others. Their measure of strength is largely a question of personality and discipline.

Why it has Developed in America.

Various reasons account for the development of political machines in American cities. Fundamentally their growth is due to the fact that most of the voters who constitute the party's membership are "hard-boiled" in their allegiance to it, and will stand by whomsoever assumes to speak in the name of the party even though he be a usurper. Engrossed in their own private affairs these "regulars" do not pay much attention to what they hear concerning autocrats, bosses, czars, rings, juntas, and mercenaries. Most of these aspersions come from the rival camp anyhow. This spirit of partisan regularity, so strong in most American cities, is the chief asset of the machine. The long ballot has also given the machine an advantage in that it renders the exercise of discretion on the voter's part very difficult, in some cases almost impossible. The frequency of elections, likewise, has had something to do with the encouragement of political machines. The eternal round of primaries and pollings has given rise to a class of professionals who must have a machine for the advancement of their own ends. The spoils system, moreover, with its comprehensive distribution of patronage, has provided the machine with the sinews of war. Without these it could not subsist, because politicians, like other mortals, must have wherewithal to live. Possibly the American genius for organization has contributed to the development of the political machine; at any rate the political leaders have drawn many lessons from the field of corporate business. It is sometimes said that the machine is organized and its members disciplined on a military basis. That is in part true; but its methods are business rather than military methods, very much so.

The Party Leader and the Party Boss.

The head of the party *organization* in the city or ward is known as the chairman or leader; the head of the party *machine* in a functionary known as the boss. The two may be one and the same person; although this is not usually the case. Qualities which make a good leader do not commonly make a good boss, and vice versa, for different methods are appropriate to the two positions. The leader has an official position in the party system;

he is chosen in accordance with the forms of law or the established rules of the organization; and he has prescribed duties. He must perform these duties, for the most part, under public scrutiny, and cannot well avoid responsibility for such decisions as he may make. The boss, on the other hand, rarely occupies any official position in the party councils; he is self-chosen or virtually so; his authority comes to him through undefined channels, and he has no formal responsibility to any one. The boss in politics is like any other kind of boss. His business is to get the job done, and to this end he must have the obedience of his helpers. His will is law; there is no occasion to argue about the sources of his divine right. The leader leads and the boss drives—as Theodore Roosevelt once aptly said.

Municipal Rings.

Rings are groups composed of bosses and their chief lieutenants. Members of the ring form the machine's inner council and direct its operations. They are held together by the cohesive bond of public plunder. Without this sustenance no ring could long endure. Even with it they often fall to fighting over the division of the spoils. Then the reformers get a fleeting lease of power. Rings are more dangerous than isolated bosses because they have the strength that comes from unity; they are made up of grizzled political veterans who must stand or fall together. The large city affords the most fertile of all fields for the growth of rings because it contains the largest proportion of docile voters, the maximum amount of disposable patronage, and the greatest facility for making deals with favor-seeking business corporations. Such corporations are not moved by considerations of sentiment. A ring of politicians that can secure them what they want is far more worthy of deference, from their point of view, than any group of reformers which cannot. It is at any rate significant that rings and bosses have found the acquisition of power to be easiest in the centers of great corporate activity—New York, Chicago, Philadelphia, and Pittsburgh.

Boss and Ring Are New Names for Old Institutions.

In spite of a common impression, rings and bosses are not American inventions. The appellations are of American origin, it is true; but the institutions are as old as democracy itself. Wherever the forms of popular government have existed without its spirit, one can find men advancing their own interests under the cloak of serving the people. Pericles was a boss in his day, and an extravagant one, as Athens found out to her cost. There were bosses in ancient Rome, as has already been pointed out, and they used methods which were closely akin to those of Tammany. The Roman triumvirate of Cæsar, Pompey, and Crassus would be called a "ring" nowadays. Sir Robert Walpole, in eighteenth century England, was a very skilful and successful boss; his ethics and methods were on a par with those of Tweed and Croker, although he did not turn his power to personal enrichment. In the years preceding the great parliamentary reform of 1832 there were bosses in nearly all the English boroughs. The naming of the borough representative in Parliament often rested in the hands of a patron, and what he had to give was called patronage.[1] Hence the origin of that sinister meaning which this term bears in modern politics. Aaron Burr was the first conspicuous boss in the United States; he has had many successors during the past hundred years. Institutions which, in one form or another, have existed over so long a period of time can hardly be the product of accidental circumstances. There must be something in the practice, if not in the theory of party government, which tends to maintain rings and bosses in existence.

The "Typical" City Boss.

In the American city the evolution of the boss has everywhere followed the same general lines. It is a case of the rise and survival of the fittest among ambitious party workers. There is a common notion that the boss is usually a man of foreign birth and that influence among the people of his own race is chiefly responsible for his power. Such, however, is far from being the case. Nearly all the outstanding American bosses have been indigenous products. Many of them have been of foreign parentage, it is true; but that is of no significance for persons of foreign parentage constitute a majority in most of the larger American cities. Nor is there much basis for the notion that bosses derive their power from their hold upon docile voters of their own alien race. Bosses of one race often dominate cities or wards in which another racial strain predominates. Nor yet is the boss always an uneducated fellow; some notable ones have been college graduates. Educated or not they are always men of superior intelligence. Their connections are not mainly with the underworld or the ignorant; very often they have close friends and advisers among the shrewdest professional and business men of the city. Many descriptions of the "typical" American boss have been written, but they are not very helpful because bosses do not conform to a type.[1] They are of many species and they owe their power to a varied combination of personal qualities and local conditions. How different two such men may be, in personality and methods, may be shown by placing them side by side.

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[1] There is much discussion of this matter in Edward Porritt's *Unreformed House of Commons* (2 vols., New York, 1903). The author once told me that he never fully appreciated the work of the "patron" in the unreformed English boroughs until after he had studied the methods of the American municipal boss.

Richard Croker.

Richard Croker of New York dominated the affairs of Tammany Hall for fifteen years (1886-1901), the acknowledged boss of the Democratic party in that city. Croker was a native of Ireland, born in 1843, but came to New York with his parents in 1846. At thirteen years of age he went to work in a machine shop but soon grew interested in prize-fighting, at which he proved to be an adept. Presently he became the leader of a group known as the Fourth Avenue Tunnel Gang and by virtue of his ability to sway the political activities of this group he was given a minor place on the city payroll. At the age of twenty-three he was elected to the Board of Aldermen and became active in the ranks of the Young Democracy, a faction of Tammany which was intermittently adding to the worries of the Tweed Ring. But there was no open break and Croker continued to rise in the scale of party prominence. He became coroner in 1873, and fire commissioner in 1883. "Honest John" Kelly was at this time the chief Tammany boss, having succeeded Tweed in this position when the latter went to jail in 1873. Croker was one of Kelly's principal lieutenants and on the death of his chief in 1886 became the acknowledged head of the Wigwam. With great skill he managed to steer his party through many difficult situations during the next dozen years and with one exception carried all the mayoralty elections from 1886 to 1901. After the defeat of his candidate in the latter year, Croker retired from the leadership and from active politics. He went to live in Ireland, where he died in 1922.

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[1] The best book on the subject is Samuel P. Orth, *The Boss and the Machine* (New Haven, 1918). There is a good chapter on "The Boss" in M. Ostrogorski, *Democracy and the Organization of Political Parties* (new edition, 2 vols., New York, 1922), and some shrewd characterizations in Theodore Roosevelt's *Autobiography* (New York, 1920), especially pp. 61-101; 144-184; 185-222.

His Aims and Methods.

Croker was not an easy boss. He had a forceful, though by no means an alluring personality, having never lost the countenance or manners of a pugilist. In the art of picking men who could serve him he was extremely proficient, and among his henchmen he maintained a high standard of discipline. His rulership was that of a despot, for although he did not hold himself responsible to anyone he held all his followers strictly responsible to him. He looked for results, not excuses. The precinct captain or district leader who did not deliver the prescribed quota of votes on election day was decapitated without parley or argument. Croker had a penchant for what we now call "efficiency"; so he put the operations of Tammany on a dividend-paying basis. Every city official who owed his appointment or election to the favor of Tammany was assessed a definite portion of his salary. Even the charwomen at the city hall gave up a share of their small daily wages. Like taxation the levy was proportional, definite, and difficult to evade. There was a definite understanding that those who obtained nominations for office, even for judgeships, should pay in advance. Not all this revenue, of course, went into the pockets of the boss. Many millions were needed to keep the machine functioning. Croker was a hard worker, with a relish for details; even small matters received his personal attention. When he found trouble brewing in his organization he tackled it at the incipient stage, using firmness or compromise as the occasion seemed to dictate. As a political meteorologist, his judgment was uncommonly good. He did not assume to lead his cohorts where they were not ready to follow. Contrary to the popular impression few bosses leave office with a fortune in hand, but Croker was one of the few. He assailed "riches and reform" but did not disdain the riches for himself. He was quite candid on this point. On one occasion, in his testimony before a legislative committee, he remarked: "I am not working for the city; I am working for my own pockets all the time."

Another Notable Boss: George B. Cox of Cincinnati.

A very different type among bosses was George B. Cox of Cincinnati, who died half a dozen years ago. Cox dominated the Republican machine in that city for more than three decades, during which time his supremacy was often assaulted but never overthrown. Unlike Croker he was a native son. Beginning his public career as a member of the Cincinnati common council in 1880, he soon became leader of the majority faction in that body and presently retired from the council in order that he might better pull the strings from behind the scenes. His sphere of control ultimately extended to the county in which Cincinnati is located and he became a factor in state politics as well.

The Two Bosses Contrasted.

Between Cox and Croker there was no resemblance in appearance, in personality, or in methods. Cox was a silent, unostentatious, retiring man. His silence was looked upon by many as the mark of a sullen disposition. He made few friends in the usual sense, and certainly was not a "good mixer." Richard Croker at the pinnacle of his power bought himself a stock-farm and made a garish display of his wealth, but Cox of Cincinnati was always modest in his personal tastes. From a little room situated just above a popular grogshop he planned his campaigns and directed the operations of his brigadiers. Very few prominent politicians came to see him; he got word back and forth by confidential messengers who slipped in and out unobtrusively. The public saw little of him, for he avoided political gatherings and would gladly have kept himself anonymous, but of course the newspapers would not have it so. Apparently Cox loved power for power's sake and did not use it to feather his own nest. With his natural ability and his organizing genius, with his capacity for self-effacement while holding a great city in the hollow of his hand, he might easily have made his mark in the world of industry or finance. Cox met his Waterloo because he ultimately lost his old-time caution and resorted to the methods of a desperate man. His power was shaken by a serious defeat in 1905 and he never regained it fully, although he continued to influence the municipal politics of Cincinnati until his death in 1916.

The Essentials of a Successful Boss.

Bosses do not therefore conform to a type. There are easy bosses and harsh ones, bosses whose personality attracts and those whose personality repels. Some are rough and blustering; others are mild-mannered, taciturn, and averse to all publicity. Some are the incarnation of avarice, others are in the game for the love of it and look upon personal gain as a mere by-product. Some are genuine friends of the poor and the oppressed; others merely exploit the "other half" for their own ends. It would be difficult to portray a composite boss. Yet there are certain qualities which a boss must have in order to be successful. He must be able to stand hard work and enjoy it, for the post is no sinecure. He must be skilled in the art of picking his lieutenants and courageous enough to part company with those who prove deficient. His judgment of complicated and difficult situations must be swift and reliable. Ability to keep a sensitive finger on the public pulse and to detect its variations is essential. As Plunkitt of Tammany Hall once expressed it, "he must study human nature and act according."[1] He must know the principles of politics, not according to Aristotle or Montesquieu, but as they are applied in his own community. In mulling over the possible issues he must be guided to some extent by intuition in determining which ones are likely to be popular. He must keep a mental inventory of available candidates and use those who seem to fit the public temper of the moment. Ability to keep his plans secret until the right psychological moment, a scrupulous regard for the fulfilment of his promises, a mastery of intrigue, a cool head in emergencies—these are traits which a successful boss must possess. The tricks of the trade are numerous and it takes many years to master them all. Bosses get to the top by a process of natural selection and their progress upward depends upon the success with which they adapt themselves to an ever-changing environment.

The Most Notable of American Municipal Rings—the Tweed Ring.

A boss prefers to have subordinates rather than colleagues, but for one reason or another this is not always practicable. In such cases it becomes advisable to form a ring or group of bosses so that collusive action may be promoted and the danger of friction avoided. The most notable of these groups in modern times was the Tweed Ring, which plundered New York City during the years 1868-71. This ring was a quartette, with the mayor as one of its members. The arch-ringster of the four was William M. Tweed, who has been laconically described as "an American by birth, a chairmaker by trade, a boss by natural process of evolution, and a grafter by choice."[2] His outward appearance gave no indication of his sordid ideals and crude methods. He and his colleagues took the most important offices in the municipal administration for themselves (Tweed becoming street commissioner), and launched into an extravagant program of public improvements. Thousands of names went on the payrolls; contracts were handed out with no heed to the waste involved; land was bought from political favorites at unheard-of prices.[1] By the distribution of patronage on a vast scale, by fraudulent naturalization, by illegal registration and crooked vote-counting, even by downright bribery of all and sundry who stood in its way, the Tweed Ring managed to entrench itself so firmly that it could hardly have been dislodged in 1871 had not the members of the ring managed to start a squabble among themselves. Thereupon the courts were called into the situation, the ringsters were jailed or forced to flee the country, and Tammany was defeated at the election of 1872. Tweed kept no records of profit and loss, but his control of the city was estimated to have cost the taxpayers about $150,000,000 in less than four years.

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[1] W. L. Riordon, *Plunkitt of Tammany Hall* (New York, 1905).

[2] S. P. Orth, *The Boss and the Machine* (New Haven, 1918).

The Philadelphia Gas Ring.

The rapidity with which the Tweed Ring rose to power was attributed in some quarters to the presence of a large foreign-born element in New York City. The soundness of this explanation, however, is rendered open to suspicion by the fact that Philadelphia had a somewhat similar experience with ring domination during the early seventies although the foreign-born element in the Quaker City constituted at that time only about fifteen per cent of the population. The Philadelphia Gas Ring had its beginnings during the disorganization of the Civil War when a few obscure but ambitious politicians managed to get control of the municipally-owned gas plant. Thereupon the employees of that department, who numbered about two thousand, were organized into a political machine and mobilized to capture the ward caucuses. "All these troops were formed into a single army, marching at the orders of the ring, with the police on its flanks. A friendly mayor filled the whole force with politicians of low degree. Corruption by means of sinecure positions in the gas department or elsewhere silenced opposition."[2] No candidate hostile to the ring could get a nomination.

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[1] Some of its operations were audacious beyond belief. The contractors for one municipal building which was to have cost about $250,000 drew about $10,000,000 before it was finished. The building was provided with chairs for which bills were rendered and paid at over $400 apiece.

[2] M. Ostrogorski, *Democracy and the Organization of Political Parties* (new edition, 2 vols., New York, 1922), Vol. II, p. 170.

The ring hoisted the standard of the Republican party, and rallied a large following by vociferous appeals to party loyalty. From its control of the gas plant it soon acquired a place of supremacy over all branches of the city's administration.

Once ensconced in power the Gas Ring dipped its talons deep into the Philadelphia treasury, though with less effrontery than its Tammany prototype. It demoralized the police and school departments with political appointments. Adopting the Tammany method of levying assessment upon all officeholders, it amassed a large fund for campaign purposes. The tax rate and the city debt kept rising rapidly, while the service in all departments became steadily more inefficient and corrupt. For a time the Gas Ring felt itself impregnable, and the chain of corruption with which it encompassed the city was indeed hard to break. Its ultimate demolition took many years of effort, but was finally accomplished by a body of patriotic citizens, the Committee of One Hundred.

Why Bossism Survives.

Bossism and ring rule are not altogether things of the past. They are to be found in the cities, and in the wards of the cities today. Yet it is a fair surmise that they would have long since been rooted out were there no reason for their existence. If rings and bosses contribute nothing to the cause of municipal democracy is it not strange that they possess such marvelous tenacity? They are assaulted and dislodged from time to time; but they almost invariably reappear in some new guise or other. Bossism, indeed, is one of the regular concomitants of the system of government which the larger American cities have been maintaining. "In many instances the boss is doing, in a crude and enormously expensive way, work that the community should and can do much more effectively. . . . The spoilsman obtains jobs for one hundred needy men, but his corrupt government will not be trusted with large power to deal with unemployment."[1] The boss is the natural product of a government of laws divested of human vigilance. A government of laws is often a mere cloak for an invisible government of men. "Who rules England?" asked a Stuart satirist. "The King rules England." "But who rules the King?" "The Duke." "Who rules the Duke?" "The Devil." So the laws rule the city, the legislators make the laws, and the boss makes the legislators.

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[1] C. E. Merriam, *The American Party System* (New York, 1922), p. 174.

A negative policy with reference to the social welfare, in a field where government ought to take the initiative, has given the boss his opportunity to serve as a philanthropist, and a purveyor of political charity. People seek and take from his hand what they are entitled to obtain, as a matter of right, from the community. His ethics aside, it cannot be denied that the boss is the most efficient individual that the American municipal system has produced. He gets results while most of those who oppose him do not. Reformers think of him as a man with horns and a spiked tail. Yet he is often more human than they are. He understands his fellow-men far better and spends far more energy in their behalf. In all this the boss can teach his critics a salutary lesson. One of my colleagues has suggested that the reformers ought to tame the boss and teach him to draw their chariot.[1] There is something in that suggestion. If we could only combine the ideals of the reformer with the methods of the boss, the American city would soon be a paragon of humane and efficient government.

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Good chapters on party finance may be found in the volumes by Ray

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[1] A. B. Hart, "A Government of Men" in *American Political Science Review*, Vol. VII, p. 13 (February, 1913).

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But the subject dealt with in this chapter is not one that can be mastered by reading books. Like trench warfare it can only be learned by taking a tour of duty at the front.

CHAPTER XVII

POPULAR CONTROL OF CITY GOVERNMENT

The Channels of Popular Sovereignty.

It is an essential of free government that the will of the people shall prevail in the decisions of all important questions. This does not imply, of course, that the people must determine every such question by their own direct action, but merely that they must possess the ultimate right to make their will effective through some established channel. Popular sovereignty is exercised, as a matter of practice, in two ways: first, by the election and recall of public officials (who, in turn, appoint and dismiss the subordinates), and, second, by the process of direct legislation through the use of the initiative and referendum. Popular control of city government through the election of representatives is the more common plan in the cities of all civilized countries today, supplemented in some instances by the other method.

Popular Control Through Elected Representatives.

The representative channel of popular control has the ostensible purpose of placing the actual functions of government in the hands of those who are best equipped to exercise them, but owing to flaws in the electoral machinery as well as to the lack of vigilance on the part of the people this purpose is not always achieved. An inherent defect of popular rule through representatives, moreover, is the fact that under normal conditions the control is periodic only. The election of public officers takes place at stated intervals; in the period between elections the voters have no direct control over the officers whom they elect. A remedy for this defect, as will be explained a little later, has been sought in the procedure known as the recall.

Popular Control Through Public Opinion.

But while the people, in the absence of provision for the recall of their representatives, have no *direct* control during the interval between elections, it does not follow that they have no control at all. Under all forms of representative government control is exercised over the work of public officials through the pressure of public opinion. This influence, while indirect, is continuous.

It is more effective in some communities than in others. It is not an easy thing to define, or to analyze; it does not lend itself to discussion in mathematical terms. The words "public opinion" are part of our everyday conversation, and in a general way everyone knows what they mean. But few terms are employed more loosely or with less deference to their exact significance.

Public Opinion Defined.

What is the "public opinion" of a city? How is it ascertained? How does it make itself felt? Broadly speaking, public opinion is the term which we use to designate the predominating collective sentiment of the people. Writers sometimes speak of this collective opinion as though it were of the same nature as individual opinion, formed by the same process and obeying the same general principles. They personify the community; they tell us that it is "merely the citizen writ large," and that its group-mind may hold opinions just as an individual mind may hold them. But, as President Lowell has recently demonstrated, the analogy is very defective, too defective to be of any value.[1] In order to have public opinion there must be a coincidence of individual opinions covering a sufficient number of persons, and preferably a majority of them. But public opinion is not merely the sum-total of these individual opinions. It cannot be ascertained by merely counting heads. The *intensity* of the opinions is quite as important as their number. Public opinion is a composite of numbers and intensity. There are times when it is emotional rather than rational,—for example, in the early days of a war. To be worthy of the name, moreover, public opinion must be *opinion*, not mere caprice or fancy; in other words, it must be consciously adopted. It must also be *public* in the proper sense, that is, it must be a predominating conviction among the people.

How Public Opinion Finds Expression.

Public opinion manifests itself in a variety of ways and is continually exerting pressure upon the officials of government. It finds expression through the editorial columns of the newspapers and between the lines of the news itself. Even though writers may try to be neutral and impartial they are unconsciously subject to the influence of the prevailing sentiment. Public opinion in a city also makes itself known through resolutions adopted by societies and organizations, through letters to the mayor and councilmen from individual citizens, as well as in the conversation of men and women wherever they discuss municipal affairs. Elective officeholders and party leaders are ever on the alert to discern the drift of public opinion, but they do not always succeed. Some men do it better than others. We sometimes hear it said that the mayor and councilmen or other city officials are setting public opinion at defiance; but rarely is this the right way of stating it. Elective officers sometimes misjudge public opinion, and try to make themselves believe that their own acts are in accord with it; but not often do they consciously defy it.

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[1] *Public Opinion in War and Peace* (Cambridge, 1923), p. 83.

Public Opinion and Propaganda.

One difficulty in diagnosing public opinion arises from the fact that much of what masquerades in its name is nothing but organized propaganda. The newspapers, in many cases, merely reflect the sentiments of their editors or owners, or of some controlling interest. In the great cities they are not trustworthy guides. Nor are the resolutions of boards of trade, labor organizations, civic leagues, and other societies to be depended upon as reliable indications of public sentiment. Most of these resolutions are adopted perfunctorily, without hearing both sides of the issue. Some prominent member reads a resolution which is adopted without discussion. Then it is transmitted to the mayor or city council as reflecting the unanimous "opinion" of the organized membership. Even letters from individual citizens, which come in stacks to the mayor's desk every day, are not always the spontaneous products of individual initiative. They are frequently inspired from some common source, as their identical wording proves. The babel of voices is very confusing and no one need be surprised that mayors often close their ears to it, preferring to be guided by their own intuition and judgment. There is no accurate barometer of public opinion, or rather there are so many barometers, each recording differently, that none affords safe guidance. A large element of public opinion is mute except when it expresses itself at the polls.

Direct Legislation.

The desire to give this taciturn element in public opinion a greater and more direct influence upon the course of government has inspired the use of the initiative, referendum and recall. The spread of these newer agencies of popular sovereignty indicates, on the one hand, a spirit of discontent with the workings of strictly representative government, and on the other hand a growing confidence in the political capacity of the voters themselves. They may be defined and described as follows:—

The Initiative Defined.

The initiative, as used in the cities, is an arrangement by which any sufficient group of voters may propose a new charter, or a charter amendment, or any change in the ordinances, and may require that such proposal (unless adopted by the city council or commission) shall be submitted to the people at the polls. If ratified by a majority, the initiated proposal becomes effective. The initiative enables the voters to frame and adopt any legal measure by direct action, without the aid of their representatives. It is a positive instrument of popular rule.

The Referendum Defined.

The referendum, on the other hand, is a device whereby a stated proportion of the voters may require that any measure which has been passed by the city council or city commission shall be withheld from going into force until the people have had an opportunity to accept or reject it by popular vote. It is a species of popular veto, enabling the voters to override the action of their representatives. A measure which is submitted to a referendum does not go into effect if a majority of the votes is cast against it.[1]

Origin of the Initiative and Referendum.

It is only about twenty-five years since the initiative and referendum, in their present form, made their appearance in America. But in a broader sense they go a good deal farther back. The right of the people to petition for the redress of their grievances, which is the essence of the initiative, is coincident with the very beginnings of American government. And the referendum is as old as the New England town meeting, as old, indeed, as the Teutonic folkmote. For nearly three hundred years the referendum in some form or other has been an American institution and ever since the Revolution its sphere has been widening. Many American cities used it throughout the latter half of the nineteenth century in connection with charter amendments, municipal borrowing, and the restriction of the liquor traffic. But this employment of the referendum was occasional and sporadic, being restricted to certain designated fields of legislative action. Not until after 1900 did the movement for city-wide, direct legislation begin to reach fruition.

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[1] This form is known as the *compulsory* referendum. But the legislative authorities of the city (city council or commission) may in some cases voluntarily submit measures to the voters—This is called the *optional* referendum.

Their Recent Spread in American Cities.

Since this date, however, the spread of the initiative and referendum in American cities has been remarkable. It has undoubtedly been helped by the progress of reconstruction in the general form of municipal government. Whenever and wherever a municipality has undertaken to remodel its charter, the supporters of the initiative and referendum have come to the front with their own propaganda. The spread of commission government, and of the city manager plan, has gone hand in hand with the extension of the initiative and referendum. Each has helped the other. Both are outward manifestations of the American civic renaissance.[1]

Their Slow Progress in European Cities.

It is worthy of comment that there has been no similar development in the cities of Europe.[2] In France there is no provision for the initiative and referendum, nor has there been any active movement for the adoption of these agencies of popular control in either national or local government. In England it has long been the practice to submit certain questions to the municipal voters at the polls (notably questions connected with municipal borrowing); but the initiative and referendum have not been established as parts of the regular governmental machinery. In Germany the new constitution makes provision for the use of the initiative and referendum in national lawmaking, but under rather strict limitations. There is no requirement that direct legislation shall also be made possible in the states and municipalities, but its extension there may be looked for within a few years if the new national government manages to retain its place in the saddle.[3]

Reasons for This Difference.

How is the rapid spread of the initiative and referendum in American cities, as contrasted with those of Europe, to be accounted for? Three reasons, at least, may be given by way of explanation. One is the decline in the quality of American municipal officeholders, especially in the quality of aldermen and councillors. The powers of city councils in the United States, as will be indicated a little later, have been steadily reduced during the past fifty years. With diminished powers the councils have failed to attract men of energy and intelligence as they did in earlier days. It is no wonder that the people, in watching the work of their city councils, should have made up their minds that they could do no worse themselves and might do a great deal better. The second reason may be found in the habit of evading responsibility which state legislatures and city councils acquired during the latter years of the nineteenth century. When difficult questions confronted these bodies it became the common practice to seek an easy solution by "putting the matter directly up to the people." Ostensibly this was a mark of the lawmaker's confidence in the wisdom of the electorate; in reality it was a mere ruse by which supine legislators sought to evade and usually succeeded in evading their own responsibilities.. At any rate the practice of voluntarily submitting matters to the judgment of the voters became more and more common until it was only a short step to the principle of compulsory submission. A third reason may be found, perhaps, in the simplification of city government that has taken place in the United States during the past twenty-five years. Commission government and the city manager plan, while possessing obvious merits in the way of simplicity, are open to the popular objection that they concentrate a great deal of power in very few hands. The initiative, referendum, and recall supply a ready means of weakening the force of this objection in that they provide an agency of electoral control over the concentration of power. The movement for the simplification of municipal machinery has thus carried the process of direct legislation along with it as a safeguard.[1]

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[1] Provision for the use of the initiative and referendum has been made in the charters of several hundred cities, but the detailed requirements show a wide range of variation.

[2] Europe is the original home of direct legislation. The initiative and referendum were used in the cantons of Switzerland long before their introduction into the United States.

[3] The Prussian Constitution of 1920 makes provision for the state-wide use of the initiative and referendum, but does not require that cities or other subdivisions of the state be given a system of direct legislation.

The Machinery of Direct Legislation.

In using the initiative and referendum there are rather elaborate formalities to be complied with, and these vary in different cities. The first step in the use of the initiative is the framing of a petition accompanied by a proposed charter amendment or ordinance. This may be done by any group of voters; but initiative petitions are usually started by some society or organization—a chamber of commerce, labor federation, or civic league, for example. A stated number of signatures to the petition must be obtained, the minimum being usually fixed at from ten to fifteen per cent of all the enrolled voters. These signatures are obtained in various ways—by holding meetings, by a house-to-house canvass, or by placing copies of the petition in stores, banks, and other places where people may sign them. When enough signatures have been obtained, the petition, accompanied by the proposed measure, is presented to the proper authorities at the city hall (usually the city clerk, or the registrars of voters) who count the names and check them with the voters' list. If they find that the petition fulfils all requirements, they so certify, whereupon provision is made for submitting the measure to the voters at the next election unless the city council passes it in the meantime. If the next election is too far away the measure may be submitted, in some cities, at a special election called for the purpose; but special elections are expensive and they are avoided whenever possible.[1] To inform the voters concerning the various measures which, having been initiated in this way, are to appear before them on the ballot, it is the custom in most cities to have an explanatory pamphlet prepared and mailed to every voter some days prior to the election. These pamphlets contain the texts of the various proposals and also, in some cases, a summary of the arguments for and against their adoption. At the election the voters mark their ballots with a cross under the words *Yes* or *No* which are set opposite each measure.

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[1] The adoption of the initiative and referendum in state government has also, quite naturally, promoted their adoption by the cities.

The Initiative Petition.

Verifying the Petition.

The Submission of Initiated Measures.

When it is desired to invoke the referendum upon any measure passed by the city council of its own volition, a petition is circulated for this purpose by any group of interested voters. If enough signatures are obtained (usually the same number as is required in the case of the initiative); the petition is filed at the city hall; the names are then counted, checked up, and certified; and the question of acceptance or rejection is placed on the ballot. Meanwhile the measure is withheld from going into operation.[2]

Referendum Petitions.

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[1] A further objection is the smallness of the vote usually polled at special elections. For submission at a special election, moreover, a larger number of signatures is usually required.

[2] An exception is usually made in the case of "emergency" measures affecting the public safety, health or convenience. These, if enacted by a

Extent to Which the Initiative and Referendum Are Being Used in American Cities.

Matters of every sort are brought forward by initiative petitions. At the outset, when the system possessed the flavor of novelty, the average voter displayed a commendable degree of interest in the questions submitted to him and voted *Yes* or *No* with a good deal of discrimination. But the task of reading prosy pamphlets, with arguments for and against proposals which few voters could clearly understand, soon became irksome. The consequence was that large bodies of voters, in self-defence, began to follow the rule "when in doubt, vote No"; with the result that in some cities all the proposals on the ballot were rejected. Ten years ago it was commonly said, and the figures seemed to support the assertion, that the affirmative of every question had an advantage at the polls. Today, in those cities which have used the initiative and referendum most freely, this can no longer be said. The voters are still showing some discrimination and the result has been to put a damper on the alacrity with which freak proposals are brought forward from all quarters. To convince an electorate which has learned to be skeptical is a task which requires a well-organized, and sometimes expensive, campaign of education.[1]

Their Value in Use.

The initiative and referendum have now been used on a considerable scale by many American cities for a dozen years or more. In some cities as many as thirty questions have been submitted to the voters at a single election. The questions range all the way from the adoption of a new city charter to such trivial matters as the length of the lunch-hour for firemen.[2] Our experience with direct legislation is now sufficiently extensive, therefore, to warrant some appraisal of what it has accomplished. When the movement was in its initial stages many practical merits were claimed for the system, and many dire predictions were also made as to the evils which would result from the free

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prescribed majority of the city council are not, as a rule, open to rejection by popular vote.

[1] In thirty-five cities from which figures have been obtained, seventy-nine propositions were voted upon during the years 1921-1922. Of these forty were carried and thirty-nine rejected.

[2] Some of the matters submitted in various cities during the years 1921-1922 were as follows: daylight saving, water filtration, abolishing one-man cars, street railway fares, gas rates, franchises, funds for public concerts, jitney buses, police pensions, two-platoon system for firemen, salaries of city officers, requiring all municipal boards to hold open meetings, equal pay for teachers of both sexes, leasing city property for private purposes, etc.

use of the initiative and referendum by American states and cities. To what extent have these claims and predictions been borne out by the experience of the ensuing years? What are the merits and defects of direct legislation in actual practice?

Merits of Direct Legislation:

1. It Strengthens Popular Control of City Government.

The chief purpose of the initiative and referendum is to make the laws and ordinances more responsive to the direct influence of public opinion, in other words to render more effective the principle that popular control of lawmaking should be unequivocal and complete. Prior to the introduction of these new expedients it was unquestionably true that American city councils, in many cases, failed to sense the drift of public opinion. On the other hand their work often disclosed an exemplary obedience to the dictates of some invisible authority. This was particularly true of the way in which the city councils made use of the franchise-granting power. Valuable concessions for long terms of years were often given away in grotesquely one-sided bargains. These things are still done, to some extent, in cities which have adopted the initiative and referendum as a means of popular control; but they are not done with the old-time impunity. The possibility, and in same cases the certainty, that the people by their direct action will upset the best-laid plans of any controlling element in the city council must always be reckoned with.

2. It Has An Educative Influence.

It is asserted that the process of direct legislation has an educative value in that it encourages the voters to become better informed about municipal affairs and to take a more intelligent interest in what is going on at the city hall. The line of reasoning usually followed in support of this proposition is plausible enough. So long as everything is decided by a body of councilmen or commissioners, it is argued, the people as a whole are not likely to display any direct interest in the proceedings. The surest way of promoting popular interest in political problems is to give the people the direct responsibility for deciding them, and not merely a vicarious power exercised through representatives. It is pointed out, moreover, that the practice of mailing a pamphlet of information to every voter on the eve of the election assures a certain amount of education upon the issues. Even if it be true that a good many of these pamphlets go into the waste basket, it is nevertheless beyond question that just as many, and possibly more, are read by the voters.

And Civic Education Is Very Important.

Now it may be granted that if there is any electoral device which can be depended upon to make the whole citizenship more enlightened and more interested, the arguments in favor of using it would be very strong indeed. For civic education is the basis of all permanent governmental reform. The most serious indictment of the American municipal system is not its toleration of antiquated charters or lax business methods or incompetent officeholders. These things are merely the outcroppings of electoral indifference. The underlying cause, to which most of our municipal ills are attributable, has been the failure to interest the people, and to keep them interested, in questions of municipal policy. If, then, a frequent resort to the process of direct legislation serves to make the voter more civic-minded, as the friends of the initiative and referendum are fond of asserting, it would be hard to think of a stronger argument in favor of their plan.

But the Influence of the Initiative and Referendum as Agencies of Civic Education Have Probably Been Overrated.

How does this claim stand up under the acid test of matching it with the facts? Has the use of the initiative and referendum in American cities during the past twenty years contributed substantially to the political education of the people? Do the voters, as a class, know more about municipal problems and display a more intelligent interest in those communities which make free use of direct legislation than in those which do not? If you seek on this question the opinions of those who are at the vantage points of observation, you will get them in considerable variety. There is some ground for the belief that the system of direct legislation does foster electoral interest in public questions, but not greatly so after the novelty has worn off. The average voter is not capable of sustained enthusiasm; he soon finds the task of crystallizing his own opinions to be a good deal of a bore. That is not astounding, for to most men the process of individual thought and reflection is hard work. It is very much easier to let some organization consider the various questions in all their bearings and tell its members what to do. That is what customarily happens. The party leaders, the chamber of commerce, the citizens' association, the labor federation, the league of women voters, and various other bodies are the ones that make up the voter's mind for him. Thousands of voters, affiliated with these various organizations, find such recommendations a sufficient guide, without further study, hence the amount of political education which percolates through to the individual is relatively small.[1]

3. It Protects the People Against Legislative Trickery.

The process of direct legislation, it is claimed, affords a guarantee that charters and ordinances will be framed by those who wish them to be successful. This is not always the case in the process of representative legislation. The motives of those who introduce measures before the city council are not always easy to fathom, nor are they in all cases what they superficially appear to be. The same is true of the motives which dictate the making of amendments to measures when they are before the council for consideration. City councils have often gone through the motions of rendering deference to public opinion, while carefully abstaining from actual compliance. They have given the shadow and withheld the substance. Amendments ostensibly designed to improve a charter or ordinance often prove to be hostile to this professed purpose. City councils do not, as a rule, commit the political folly of killing popular measures in the open by direct use of the bludgeon. They find it more advantageous to use the artifices of treacherous friendship. Under the pretext of agreeing to a reasonable compromise, or series of compromises, it is often possible for any strong element in the city council to dictate the virtual emasculation of popular measures.

4. It Promotes Popular Respect for Law.

The process of direct legislation affords no opportunity for the insertion of "jokers" as a means of turning a good ordinance into a bad one. Every measure goes to the people as originally framed by its friends. Those who desire its rejection must come out into the open. Incidentally, it is claimed, this promotes the popular respect for the laws. One reason why people so often manifest a deficient respect for the ordinances of the municipality may be found in their knowledge of the way in which these enactments have been passed. They are well aware that intrigue and subterfuge have figured in the process. But measures enacted by means of the initiative and referendum bear the stamp of specific public endorsement. They are the handiwork of the people themselves, and hence have a strong claim to be respected.

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[1] In rural communities this does not appear to be the case, at least not to the same degree. The farmers have more leisure in which to read their pamphlets and they are more given to independence of thought anyhow.

Does Experience Bear Out This Claim?

It would be interesting, but not easy, to discover the extent to which this claim is borne out by the actual experience of American cities. Laws and ordinances relating to the manufacture and sale of intoxicating liquors, for example, have been treated with a good deal of disrespect in American cities during the past few years. Is there any ground for the belief that this antagonism, among certain elements of the population, would have been less widespread or less intense if the policy of prohibition had been endorsed by popular vote rather than by legislative action? It may well be doubted. Local prohibition by popular vote, when cities had it, did not obtain any more loyal acquiescence than national prohibition by constitutional amendment. The very people who make the laws are often the first to offend. Lawlessness seems to be inspired by something more fundamental than the mere mechanism of lawmaking. We have waves of it now and then, especially after great wars and in times of economic depression.

5. It Results in a Better Drafting of the Charters and Ordinances.

The claim is made that direct legislation results in the adoption of charters and ordinances which are better drawn, less ambiguous in their terminology, and more satisfactory as instruments of government than are the products of representative lawmaking. At first glance this may seem a strange claim to make, since the drafting of such measures is a technical task which on its face ought to be as well, or even better performed by the city councilmen than by any group of petitioners among the people. But the fact is that in neither case is the work done by amateurs. The ordinances which come before the city council are not drafted by the councilmen themselves. They are prepared, as a rule, by the city's law department. And ordinances which accompany the initiative petitions are not framed by the petitioners, but by lawyers whose assistance is secured for the purpose. So the question simmers down to the relative skill and intelligence of the city's law department, on the one hand, and the legal advisers of the petitioners on the other. In this connection it should be borne in mind that appointments to the city's law department are, as a rule, political appointments. Party service generally counts for more than legal skill and expertness. The law department, moreover, is almost always overburdened with work, especially in the larger cities, hence there is a temptation to do things in slipshod fashion. It is not difficult for any group of men to obtain, at a relatively small outlay, more intelligent and more painstaking service in drafting an ordinance than the council obtains from the city's law department. The petitioners can at least obtain service from some lawyer whose heart is in the work, and that counts for a good deal.

Validity of This Claim.

There is another consideration. Even if an ordinance be carefully drawn by the city's law department, there is a fair chance that it will be riddled with holes before the council has finished with it. Amendments and substitutions will be made without heed to their legal significance and couched in the technical verbiage which the average alderman likes to use but does not understand. Measures initiated by popular petition are not subject to amendment. In one sense this is a defect; in another it is an advantage. American municipal experience during the past twenty years affords no convincing evidence that measures directly enacted by the people are inferior either in substance or in form to those enacted through representative channels.

The Defects of Direct Legislation.

On the other hand these two decades of experience with the initiative and referendum in American cities have disclosed some serious objections to the process of direct legislation. First among these objectionable features is the ease with which the system can be used by any well-organized group to promote its own selfish advantage. In this connection there have been some surprises. It was commonly assumed, fifteen years ago, that public service corporations, large property-owners, and the so-termed "vested interests" would have most to fear from direct legislation, while the rank and file of the workers, the non-propertied element, would stand to gain by reason of its use. But this assumption betokened a child-like unsophistication in the technique of practical politics. In politics, as in war, mere numbers do not prevail against superior organization and discipline. Property and wealth can be mobilized, and they invariably are mobilized when their interests appear to be threatened. As between an organized minority which possesses the wealth, and an unorganized majority which possesses the votes, there need be little question concerning the outcome in four elections out of five. You can give every citizen an equal vote

1. It Lends Itself to Selfish Exploitation by Any Well-Organized Group of Voters.

yet come far from giving everyone an equal political influence. The acceptance or rejection of any question on the ballot will always depend, in large measure, upon the relative facility with which its supporters and opponents are able to organize, upon the degree of unity in their ranks, and upon the amount of money they are respectively able to spend upon a "campaign of education," which is usually a synonym for expensive and aggressive propaganda.

And Neglects the Interests of the Unaffiliated Citizen.

When, therefore, a proposal has to do with the immediate interests of any well-organized group, whether it be organized capital, organized labor, or organized partisanship, the chances of its adoption are greatly increased. If the proponents, moreover, are able to spend large sums of money in a campaign of propaganda, the chances of success are still greater. And propaganda is largely a matter of spending money. Its results are closely proportioned to the amount expended. By persistent and effective advertising you can "sell" an idea to the people as easily as you can sell a breakfast cereal or a patent medicine. This being the case, it is clear that the measures which have the least chance of success at the polls are those which concern the good of the average citizen, for he has neither an organization to champion his cause nor unlimited funds to spend in "moulding public opinion." It is not strange, therefore, that some of those who enthusiastically befriended the initiative and referendum fifteen years ago are now complaining that the new devices have been captured by "the interests" for their own ends. The marvel is that they should have expected anything else. It ought to be elemental that no giant combination of brains, organization, and wealth can ever be negatived in American municipal politics by merely calling upon the people to mark a few additional crosses on their ballots.

2. It Results in Minority Rather Than in Majority Rule.

A second shortcoming of the initiative and referendum, as disclosed in the cities of the United States during the past twenty years, is their reputed failure to obtain *majority* decisions at the polls. Most of the arguments for direct legislation start with the postulate that "the will of the majority" ought to prevail. But what usually does prevail is the will of the minority. Not ten per cent of the measures enacted by the process of direct legislation in American cities have had an actual majority recorded in their favor. Forty per cent of the registered vote, under normal conditions, is sufficient to adopt a measure; even thirty-five per cent is ample as a rule. Measures have been carried, not infrequently, with less than thirty per cent of the registered voters pronouncing in their favor. The reason for this is not far to seek. Many voters stay away from the polls; and of those who attend the election considerable numbers are interested only in the candidates and not in the questions. So they pay no attention to the mass of printed matter at the bottom of the ballot.

Is This a Real Objection?

"But what of it?" the friends of direct legislation may reply. "The voters have their opportunity; if they do not avail themselves of it by going to the polls and marking all the questions on the ballot, they have nobody to blame but themselves." That is true; it explains, but hardly justifies a system of minority lawmaking. To urge that a political device would function properly if people were differently-minded is like saying that water would run uphill if the law of gravitation could be persuaded to turn itself end for end. Were it not, indeed, for the perverseness of the voters, our system of representative lawmaking would never have fallen into disrepute; and there would never have been any call for direct legislation. Political institutions must be judged in the light of their relation to human nature as it is. Whether the initiative and referendum would work better if human beings were differently constituted is hardly worth wrangling about. The important thing is that in actual practice what purports to be the verdict of a majority is the verdict of a minority, sometimes a small minority. The retort that this is the people's own fault brings us nowhere. All the weaknesses of government are the people's fault.

3. It Affords no Opportunities for Concession or Compromise.

Direct legislation is subject to the essential limitations of the categorical. A referendum is merely a call for the Yeas and Nays; it affords no opportunity for ascertaining the voter's entire opinion on any subject. We are sometimes told that direct legislation is merely an elaboration of the methods used for nearly three hundred years by the New England towns, and in a sense that is true. But in one very important particular the analogy fails. The town meeting has always afforded opportunity for discussion, for compromise, and for the amendment of any proposal. The referendum calls for a straight vote on the "previous question," that is upon the question as it stands on the ballot. It assumes that every voter is ready to say *Yes* or *No* to any question which may be placed before him. The unthinking voter may be prepared to do this; for those who know least about any subject are frequently the ones most ready to deliver their opinions *ex cathedra* upon it. But very few intelligent voters find themselves able to give exact expression to their opinions by the simple expedient of marking a cross. This is especially true when the question is one which raises more than one issue and carries various implications, as referendum questions sometimes do. When, therefore, a voter marks his ballot affirmatively he does not always mean that he approves the proposal whole-heartedly. Very often he means that having to choose between two evils he decides to take the lesser. To say that direct legislation "gives the people what they want" is to take a great deal for granted. Not infrequently it offers them a choice between two alternatives, neither of which they want.

Summary.

The initiative and referendum, as used in American cities during the past twenty years, have neither fulfilled the hopes of their friends nor justified the forebodings of their opponents. Direct legislation has not put an end to the power of political bosses, or destroyed the party system, or transformed electoral indifference into popular enthusiasm. On the other hand it has not thrust the cities into the clutches of demagogues nor wrecked the foundations of their government. Ordinances passed by means of the initiative and referendum have been, on the whole, no better and no worse than those passed by city councils. The strong probability is, if one may venture a prediction, that less use will be made of direct legislation as time goes on. This does not mean, however, that the process will be altogether discarded. The people are likely to keep it as a safeguard. There is no good reason why they should not do so. The impeachment procedure, as provided in the national and state constitutions, for example, is cumbrous and expensive. If used at frequent intervals it would work more harm than good. But as a weapon of last resort, for use in emergencies, its value is unquestionable. In like manner the initiative and referendum will doubtless have their chief value, as time goes on, in providing the voters with a spur which they can drive into the flanks of the city council when an urgent need arises.

The Recall.

The recall is usually, but not necessarily, linked with the initiative and referendum. Each can be used without the other. The recall is the right of a designated number of voters to demand the immediate removal of any elective officeholder and to have this demand submitted to the voters for decision. A petition for removal is drawn up and circulated for signatures; when enough signatures have been obtained they are presented to the proper authorities who thereupon hold an election to decide the matter. The petition usually states the reasons for requesting the officeholder's removal before the expiration of his term. If a majority of those who vote on the question are in favor of the removal, the officeholder vacates his post at once; if the demand for a recall is rejected, he continues in office. Provision for the recall was first established in Los Angeles (1903), and during the past twenty years it has been adopted in many cities in different parts of the country.[1] Several city officials have been removed at recall elections.[2] Nevertheless the recall has been used more sparingly than anyone expected at the time of its introduction. No figures, so far as I am aware, have ever been compiled to show how many recall elections have been held in American cities during the past twenty years, or what proportion of these elections have resulted in the removal of city officials. The number of attempts has probably not exceeded a hundred and fifty, of which not more than half seem to have been successful. An average of three or four recalls a year would seem to indicate a very conservative use of the recall procedure.

Extent of Its Use.

Its Merits and Defects.

The purpose of the recall is to ensure the complete and continuous responsibility of public officials to the people who have elected them. It enables the establishment of longer terms of office without incurring the danger of developing an autocracy of officeholders. Obviously, however, the recall is a weapon which may easily be perverted to wrongful use. If attempts are made to oust an officeholder whenever his work gives offence to any influential element among the voters, the recall procedure will soon become an intolerable nuisance in continually bringing the people to the polls. In the long run such use of the recall would deter capable men from accepting municipal office at all. Everything depends, therefore, upon the spirit in which the recall is used. We should not assume that any institution or procedure which is capable of being misused is bound to be misused. In Massachusetts, for example, there has existed for nearly one hundred and fifty years a constitutional provision that judges, although appointed for life, may be removed at any time by the governor on an address presented to him by a majority in both branches of the state legislature. On its face this provision might seem to invite a general removal of judges in order to provide spoils for a victorious political party. But never in a single instance has it been used to that end. And so with the recall; the mere fact that it has possibilities of danger does not mean that these possibilities will ever be realized. It is like the fire-escape on the outside of a building, not to be used for getting people out under ordinary conditions, but exceedingly useful when an emergency comes.

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[1] Most of these are cities which have adopted the commission plan, or the city manager plan of government.

[2] See the article on "Some Recent Uses of the Recall" in the *National Municipal Review*, Vol. V, pp. 380-387 (July, 1916), and also the later volumes of the same periodical, especially Vol. IX, pp. 3-5 (January, 1920).

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Initiative and Referendum at the Massachusetts Convention have been printed in a separate volume of over a thousand pages (*Debates in the Constitutional Convention,* Vol. II, Boston, 1918). These debates covered every phase of the subject and brought forth every conceivable argument that could be adduced on either side of the controversy. The development of direct legislation, with summaries of referenda votes, is recorded in the monthly issues of the *National Municipal Review.* The Debaters' Handbook Series contains a volume of *Selected Articles on the Initiative and Referendum,* compiled by Edith M. Phelps (3d edition, White Plains, N. Y., 1914). Some interesting observations on the whole subject are set forth in Bryce's *Modern Democracies* (see above), Vol. II, pp. 417-434.

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CHAPTER XVIII

THE CITY COUNCIL OF TODAY

The Position of the City Council in Europe and in America.

The most striking of all differences between the European and American methods of municipal government is connected with the rôle of the city council. In European cities this body continues to be the ruling factor; it has lost little or none of its earlier supremacy. With some exceptions, which are not of great significance, the council controls all branches of municipal government and holds the administrative authorities to a strict accountability. In France, Germany, Italy, and England the chief administrative officials of the municipality are chosen by the council, and their principal function is to carry the council's decisions into effect. There is no separation of legislative and executive authority in European cities, no distribution of classified functions into different hands. This policy of making the legislature dominant in the affairs of government, whether national, state, or municipal, has been followed in all European countries since they first established their representative institutions, and there has been no intentional departure from it at any time.

How the American City Council Has Developed:

(*a*) In Colonial Days.

In the earlier stages of American municipal development the city council occupied a similar pinnacle. It was the chief, and indeed the sole governing organ of the colonial borough. This was because the English system of borough government had been transplanted to the colonies with no substantial change. It is true that some of those borough charters made provision for the appointment of the mayors by the colonial governors, whereas in none of the English boroughs were the mayors named by the crown; but this was merely a slight adaptation of an old-world system to new-world conditions, for the colonial mayor had no plenary powers and it did not much matter who appointed him. The members of the council in the colonial boroughs were chosen, as in England, by the freemen of the borough. The council was made up of councillors and aldermen (or assistants) sitting in one body; the former outnumbering the latter about three to one. Between the functions of councillors and aldermen there was very little difference save that the latter might be called upon to sit as magistrates in the borough court. The mayor was a regular member of the council and presided at its meetings. He had the same voting rights as any other member, but his assent was never essential to the validity of the council's acts and he made no appointments unless the council authorized him to do so. This, as a matter of convenience, it did from time to time. The councillors and aldermen sitting together, with the mayor presiding, exercised all the powers which the royal charters conferred upon the borough of colonial America. From the outset there were a few indications of a departure from the English doctrine of council supremacy, but there never was any doubt as to the council's ultimate legal supremacy until long after the Revolution.

(b) After the Revolution.

The Revolution did not of itself bring about any immediate change in the position of the American city council. Close corporations were everywhere abolished, but this merely strengthened the council by making it directly representative of the entire enfranchised citizenship. In some cases the councillors and aldermen began to meet separately, thus establishing in the cities a bicameral system similar to that which existed in most of the states. This system spread widely among American cities during the quarter of a century following the Revolution, although it was not adopted everywhere. Some divisions of functions between the two branches of the council naturally followed in the wake of the bicameral system; but the authority of the council as a whole was not impaired. The first overt step in the direction of lessening the council's authority was not taken until the early years of the nineteenth century when a few cities were empowered to choose their mayors by direct popular vote. This was the entering wedge. It released the mayoralty from the council's direct control. The mayor was not yet regarded as an executive official, and he was given no independent powers; but the door was thrown open for a long development in both these directions.

(c) During the First Half of the Nineteenth Century.

Notwithstanding the fact that both the national and state governments were avowedly organized upon the principle of separating legislative from executive functions, the cities of the United States accepted this doctrine slowly and with reluctance. It was not until after 1830 that the council's actions in any city became subject to the mayor's veto, and not until even later that the council began to lose its exclusive power of making appointments.[1] Even after these curtailments of its original authority had become general, the council continued to be the ruling factor in local administration. It determined the tax-rate, voted the appropriations, selected all but the highest municipal officers, and dictated their duties. This supervision it exercised, in the main, through committees chosen for the purpose—a committee on streets, on schools, on public property, and so on. As the cities grew, the councils became larger; the committees also developed in size. Committees of fifteen or even twenty-one members were not uncommon. This plan of administering the municipal services by means of council committees was logical enough in its day; it was then being followed in all other countries, and in English cities it still exists. But for reasons which have already been explained it broke down completely in cities of the United States.[2] The council committees could not or would not perform their administrative work which the rapid growth of cities made urgent during the mid-century decades; and the state legislatures thereupon proceeded to take the council's administrative functions away. As new charters were framed, or older ones amended, during the years immediately preceding the Civil War, the council's administrative powers were everywhere diminished. And after the war the same policy was continued. Public opinion became more than ever convinced that Montesquieu and Madison were right, and that a clear separation ought to be made between administrative and legislative functions in all branches of government. Writers on this subject have sometimes assumed that the "federal analogy" was influential in procuring this separation of powers in municipal government at a very early date; but such was not the case. City charters disclosing a clear intent to make and apply a distinction between legislative and administrative functions were quite exceptional until after 1850.

(*d*) The Latter Half of the Nineteenth Century.

The heyday of raids upon the council's authority was the period from 1870 to 1900. City councils everywhere put up a vigorous fight to retain their old predominance but, as the outcome proved, they were fighting for a lost cause. People had lost confidence in city councils, and with good reason, for their work represented a low standard everywhere. In one municipality after another, accordingly, the council was forced to yield before assaults made upon both its flanks. Its administrative functions were taken from it bodily and given to the mayor or to other city officials. Its powers of local lawmaking were diminished by the interference of the state legislatures. Things formerly left to be regulated by ordinance were now determined by charters or laws. With its powers abridged, the city council descended to a subordinate place in the American municipal system, although not so rapidly or so completely in some parts of the country as in others.

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[1] See *above*, p. 102.

[2] See Chap. V.

Effects of the Council's Decline:

(a) The Entrusting of Policy-Determining Functions to Non-Elective Bodies.

Now, it may be questioned whether this degradation of the city council to a place of relative insignificance in the American municipal system has been in any sense fortunate. No similar emasculation of the municipal legislature has taken place in any other country. While it is undoubtedly true that the larger part of what we call municipal government is administrative rather than legislative in character, it does not follow that general questions of administrative policy ought to be decided by administrative officers. In corporate business organizations all such questions are decided, not by the executive officials, but by the board of directors. If matters of general policy are decided unwisely, no amount of administrative skill will avail to set them right. So in the conduct of public affairs there are fundamental matters of broad concern which seem to be fit subjects for deliberation and decision by a body of popular representatives. To have them so determined is in accordance not only with the political traditions of democracy but with the temper of the people. The idea that administrative officers, mayors, street commissioners, superintendents of schools, and the like shall settle fundamental issues of general policy does not comport with the instincts of the American electorate.

(b) The Infringement of Municipal Home-Rule.

There is one other important phase to the matter. When control over the general course of local administration is taken from the city council it is in most cases ultimately absorbed by the state legislature. That is what has happened in many of the larger cities; the council has been lowered in prestige and personnel to a point where nobody welcomes the giving of new powers to it. So, when there are new powers to be exercised, the legislature chooses the lesser of two evils by keeping them to itself. As a practical matter there are only two alternatives. Legislative and policy-determining functions in cities may be left with the city councils which, despite their many shortcomings, are at least familiar with local conditions. Or, such powers may be retained by a legislature which has no such familiarity. Very little advantage is gained by pursuing the latter course.

Organization of City Councils Abroad.

(*a*) France.

Throughout the chief European countries, as has been said, the council is the pivot of the municipal system. In the cities of the French Republic it is a single chamber of from ten to thirty-six members elected by popular vote for a four-year term.[1] In the smaller cities the councilmen are chosen on a general ticket; in all the larger municipalities they are elected by districts, not less than four councilmen from each. The French municipal council has large powers. It elects the mayor from among its own members, also one or more adjoints or assistant mayors. Its actions are not subject to veto by the mayor, but in some cases they may be overruled by the national authorities. The council determines the communal tax rate and votes the annual budget. But it does not participate in the actual work of administration, for this is the prerogative of the mayor and the adjoints. The council does, however, maintain a standing committee for each important administrative department (streets, public works, sanitation, and so forth) and these committees have the right to advise the administrative officers. The French municipal council does not, like the council of the English borough, directly supervise the city's business; on the other hand it has not shared the fate of the American municipal council by being ousted from all participation in this work. Having power to choose the mayor and the adjoints, the French city council controls the administration at its source. In choosing the mayor it selects from the majority faction in its own membership, just as a prime minister is chosen in Parliament. If, perchance, the mayor, after being chosen, proves a disappointment to his supporters in the council, there is no way of deposing him before the end of his four-year term; in this respect his position is quite unlike that of a minister in Parliament; but neither ministers nor mayors usually set out to run foul of their respective supporters. The French mayor, in the great majority of cases, works in harmony with the councilmen who have chosen him.

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[1] The number is uniformly fixed at 36 members for all cities with over 60,000 population, of which there are about thirty in France. The only exceptions are Lyons, which has 54 councilmen, and Paris, which has 80.

(*b*) Germany.

In Prussia the municipal council consists of two chambers, a common council and an administrative board. The council, which may consist of from twelve to more than a hundred members, is elected by secret, direct, universal suffrage, on a basis of proportional representation. The election is by districts and the term of office is six years. One-third of the membership retires biennially. The administrative board is a smaller body, usually about one-fourth as large as the council. Its members are not elected by popular vote; they are appointed by the council either for twelve year terms or for life.[1] The two bodies sit separately, but members of the administrative board are privileged to attend meetings of the council and have the right to speak (though not to vote) at such meetings. On questions of general policy the two branches of the council have substantially the same powers; the concurrence of both is essential to any decision. Either may take the initiative, but in practice the board has usually acted first. With the actual conduct of administrative affairs, the council has nothing directly to do; this work belongs also to the board. Immediate direction of the city departments is entrusted to a joint committee or commission made up of members of both chambers with some laymen added. The share of the council in German city government is less important than that of the communal council in France, and much less than that of the borough council in England; but its influence upon the course of municipal policy is distinctly greater than that of the average city council in the United States. Since the Revolution of 1918 there has been no radical change in the powers of German city councils but the relations of the two chambers have altered somewhat. The council has perceptibly increased its control over administration.

(*c*) England.

England is the classic land of council government. In the English boroughs the council consists of a single body with two different elements (councillors and aldermen) in its membership. The councillors, whose number varies with the population of the city, are elected by the qualified voters. In the smaller communities the election is at large, but the more populous boroughs are divided into wards, and each ward elects three councillors. The term is three years, and one-third of the councillors retire annually, so that a council election is held in each ward every year. The councillors select, either from their own number or from outside, a designated quota of aldermen (one-third of the number of councillors) and these aldermen take seats in the council for a six-year term, one-half retiring triennially. The English municipal council is thus made up, in the proportion of two to one, of elective and appointive members. The plan of partial renewal at one year and two year intervals also gives it an element of stability. Both aldermen and councillors have the same powers; the aldermen differ from the councillors only in that they are appointed, hold office for longer terms, and are usually made the chairmen of important committees.

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[1] Since 1918 the six-year term has been adopted in some cities.

Position and Powers of the English City Council.

The council is the dominant, and to all intents the sole governing organ of the English city. It chooses each year, from within or outside its own membership, a mayor who serves as the council's presiding officer but has no independent authority, or almost none. The council makes the local bylaws, determines the tax rate, votes the appropriations, appoints practically all the city officials, and has direct supervision over the various municipal departments. This supervision is exercised by means of standing committees, one for each department. The actual work of administration, however, is performed by permanent officials who work in conjunction with the committees. This may seem a strange way of managing the routine administrative work of a large community, to wit, by officials responsible to committees, and committees responsible to the council. On paper a more admirable arrangement for evading individual responsibility would be hard to devise. And it is quite true that if the English council committees were to assume, on their own initiative, the active direction of the municipal departments, or if the council as a whole should undertake to meddle with departmental details, the whole plan would speedily collapse. But in this as in other branches of English government there is a wide gap between the possibilities and the practice. The council, although free to do as it pleases, has a habit of accepting the recommendations of its committees. The committees, in turn, have a habit of accepting the advice of the permanent officials.

In other words, the permanent administrative officials exercise the power and shoulder the responsibility; the committees and the council merely concur and confirm. Habit or tradition is a powerful factor in the practical workings of government. For that reason the English system of municipal administration has been able to combine popular sovereignty with expert administrative direction in a workable scheme, each supplementing and at the same time restraining the other.

The Great Variation in the Structure of American City Councils.

In describing the organization and powers of the American city council it is impossible to convey a correct impression by using such general terms as are used abroad. We cannot say that American city councils are organized thus and so, or that they have such-and-such powers, for no two of them are alike. French, German, and English city councils represent in each country a homogeneous institution. The organization and powers of the city council are exactly the same in Bordeaux and Marseilles; the municipal council of Birmingham does not differ in any essential respect from that of Leeds. But in the United States an accurate description of the New York board of aldermen would not in the least fit the city council of Boston, nor would a citizen of Baltimore recognize the San Francisco board of supervisors as having any counterpart in his own community. Albany, for instance, has a mayor, a board of estimate, a board of control, and a common council of nineteen members, the last-named having no administrative functions. Buffalo, in the same state, has no independent mayor, no board of estimate, no board of control, but a commission of five members which combines both legislative and administrative functions. There is a great variation all over the country in the size of the councils, in the methods of electing their members, in their relations with the mayor, in council procedure—and most of all—in the powers which the city councils possess. These differences are even greater than they used to be, for charter changes have been very numerous during the past twenty years and they have conformed to no general principle as respects the place of the city council in city government unless it be the principle that the council's authority should be diminished wherever practicable.

Single Chambers Are Now the Rule in American Cities.

In most American cities the council now consists of a single chamber. Twenty-five years ago the bicameral system was very common; a great many of the more important cities maintained an upper chamber commonly known as a board of aldermen and a lower chamber which was usually designated as the common council. This arrangement, which provided the cities with too much legislative mechanism, was stanchly defended for many years on the ground that it provided a safeguard against hasty and unwise action. But the evils which went with it, as disclosed by the painful experience of one city after another, were eventually felt to outweigh its merits, and the telescoping of municipal chambers has been going on steadily in recent years. Among the twelve largest cities of the United States, not one now maintains the dual system; among the smaller cities the proportion is almost negligible. The widespread adoption of the two-chamber plan of council organization, in the earlier part of the nineteenth century, was another indication of the attempt to mould the government of the cities along lines marked out by the nation and the states. It was an unwise move in the first place, but not until the cities developed in size and problems did the error become generally recognized. By that time the double chamber had firmly anchored itself as a municipal institution and its elimination has been a matter of no small difficulty.

The Size of the Council.

In European cities the size of the council is everywhere proportioned to the size of the community; in the United States this is far from being the case. It happens that the two largest American cities have the two largest councils, New York with 71 and Chicago with 50 members respectively.[1] Philadelphia, the third city, has a council of 21 members, but some smaller municipalities have larger bodies. In Cleveland, for example, there are 25 councilmen, in St. Louis 28, and in Baltimore 19.[2] Detroit and Boston, on the other hand, have only nine councilmen each. In the smaller cities the council varies from seven to about twenty members.[3] The tendency everywhere, during the past twenty-five years, has been to cut the council in size as well as in power. This pruning process has engendered in some communities a feeling that the council no longer affords adequate representation to all sections of the community or to all classes of the population.

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[1] In New York it is called the board of aldermen. In its membership are 65 aldermen together with five borough presidents and a separately elected president of the board of aldermen.

[2] Until 1923 Baltimore had two chambers, with twenty-four members in one and nine in the other. This has now been replaced by a single chamber of nineteen members, of whom the president is to be elected at large, and the others from six councilmanic districts, three from each.

[3] In cities with the commission form of government the number is invariably five (see p. 404); under the city manager plan the council usually contains five, seven or nine members.

The Term of Councilmen.

The usual term of councilmen in the United States is two years; but one-year terms are still the rule in some cities and three-year terms are not unknown. In Baltimore the term is four years. Where the term is longer than one year a proportion of the membership retires annually. As a rule any qualified voter may be elected. In most of the smaller cities no regular salaries are provided (occasionally there is a fee per meeting), but in more populous communities the practice of paying a stated annual remuneration to each member of the council has become general.[1] The wisdom of this policy has been the theme of much controversy. On the one hand it is pointed out that a councilman who takes his duties seriously must give a considerable portion of his time to the city. Men who have themselves and their families to support cannot do this if there is no pay attached to the office. Or, if they do consent to serve, they are under a strong temptation to recoup themselves in some roundabout way—by getting contracts for their friends or by accepting sinecure positions on the payroll of some private corporation which is looking for favors from the city. When a city gives its councilmen or aldermen no salaries it is surprising how many of these officials manage to find some sort of private employment which yields good pay with no onerous duties. On the other hand, if a substantial salary is provided, the position of councilman is likely to be sought by professional politicians for its emoluments alone. It becomes a job worth seeking, and worth working for—until after the election. Some cities have tried the compromise of paying a moderate sum, not enough to make the position a shining mark for the political pot-hunters but sufficient to remunerate any honest citizen for the time which he gives to the city. Like most compromises this one does not appear to have given satisfaction to anybody.

Should Councilmen Be Paid?

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[1] The highest rate is that paid in Philadelphia and Detroit—$5000 per year. Chicago pays its councilmen $3000 per annum; the New York aldermen get $3000; in Cleveland the figure is $1800; the members of the Boston and Baltimore city councils receive $1500.

Methods of Choosing Councilmen:

(*a*) By Wards or Districts.

There are two methods of choosing members of the city council. Election by wards or districts was practically universal fifty years ago in all American cities of any considerable size. It is still the general practice in the larger European municipalities. Under the ward or district system the city is divided into areas which are supposed to be approximately equal in population, and each area elects one, two, or three councillors. Chicago has fifty wards, with one alderman from each. Wards or districts are purely arbitrary divisions, and their boundaries are altered from time to time as the population of the city changes. This redistricting usually affords an opportunity for gerrymanding or boundary manipulations in the interest of local politicians.

(*b*) At Large.

Election at large is the second plan. Ward lines are disregarded and the councilmen are chosen by the voters of the entire city. This is the common method in the smaller cities; it is used in a few of the larger communities as well—notably in Detroit, Boston, and Los Angeles.

Merits and Defects of the Ward System.

Both election-by-wards and election-at-large have something to be said in their favor; and both are in some respects open to objection. The ward system ensures the representation of all sections of the city; it places in the council men who may be presumed to know the needs of their respective localities, and it makes virtually certain that both political parties will be represented in the council's membership. On the other hand it fosters a spirit of localism and lessens the emphasis upon the interests of the city as a whole. The American city is something more than a hodge-podge of neighborhoods; it is more than the sum of its wards. On all important issues there is, as a rule, a city-wide sentiment which will manifest itself if given a fair chance. The ward system breaks this into segments and helps to destroy its effectiveness. The councilman who owes his election to one ward will almost inevitably make its interests his own. If he represents the first ward, why should be concern himself with the interests of the ninth? His task is to obtain the largest number of advantages, in the way of public improvements, for the ward which elected him and to which, in due course, he will appeal for re-election, if he wants to be re-elected. He is safe so long as he succeeds in getting appropriations for his own locality; he will not be turned out of office even though he lose the confidence and respect of nine-tenths of the voters in every ward but his own. If he helps his fellow aldermen to get something for their districts, it is because he wants their assistance in getting something for his own. So the work of the council degenerates into a mêlée of trading and logrolling; the councilman who refuses to join in it will merely find his own district slighted; his opponents at the next election will raise a hue and cry that the district needs a more aggressive man. The ward councilman has a narrow duty to perform, hence the voters of the ward are likely to choose a narrow man, intellectually and politically, to perform it. For such a man it is not a long step from the representation of *local* interests to the representation of *private* interests, from serving the ward to serving some corporation, some contractor, or some group of individuals who happen to be influential in the ward.

Merits and Defects of Election-at-Large.

The system of election-at-large is free from most of these objections. It helps to make the council's work a reflection of the entire municipal sentiment; it tends to draw better men into the list of candidates, and it encourages them to take a broad view of civic questions after they are elected. It raises the whole tone of the council's deliberations. In order to gain election, and to secure re-election at the hands of the whole people, a man must have something more than the favor of his own immediate neighborhood. All this is to the credit of the general ticket system; but there are some items on the debit side as well. If councilmen are elected at large, they may come, almost entirely, from a few sections of the city, some wards being regularly left without representation. All of them may be, are likely to be, from the dominant political party. The party which has a majority among the voters will nominate and elect its entire slate, leaving the minority unrepresented. This is not a mere possibility; it actually happens. Taking party designations off the ballot does not seem to prevent it. Such a denial of representation to certain sections of the city, and to the minority party, is regarded as a real grievance by those who are immediately concerned. The general ticket system also increases the cost of securing election to the council; the candidates have to conduct a city-wide campaign, which is an expensive undertaking in a large community especially for anyone who has no organization behind him.

Is there any way in which the advantages of election-at-large

Can the Two Plans be Combined?

can be secured without encountering these practical objections? Several plans have been tried. The simplest is the expedient of providing that although councilmen shall be elected on a general ticket, each must live in a different ward. This method has accomplished nothing worth while. Another plan is to divide the council into two sections, electing a part of the membership at large and a part by districts, say half the members by each method. The difficulty here is that a considerable enlargement of the council becomes necessary; if the city has fifteen wards it must have a council of thirty members.[1] The two factions are likely to be at loggerheads in their work, since they have different interests to serve. Limited voting and cumulative voting have been tried by some cities without much net advantage.[2] The preferential ballot, it was hoped, would provide a solution of the problem but experience with it has also been disappointing.[3] Various plans of proportional representation are now receiving a trial in several American cities as well as in those of the new German Republic. Whether the proportional system will reconcile election-at-large with the effective representation of minorities cannot yet be predicted, but there are reasons for believing that it will go a considerable distance in doing so.[4]

Council Meetings.

When a new city council has been elected its first duty is to meet and organize. This it does on a date fixed by the city charter. Thereafter the frequency of meetings depends upon the amount of work to be done. In France the city council meets once in three months for a prolonged session. It sits all day and every day until the accumulated business is disposed of, and then adjourns until the next quarterly session. In England, Germany, and the United States a different plan is followed. City councils meet once a week, or once a fortnight. Each session lasts for a few hours only. Special meetings may be held at any time. Business does not accumulate during prolonged intervals between sessions, as in the case of a legislature. In France and England the mayor presides at the council meetings; in Germany the burgomaster does not. In the United States there are a few cities—Chicago is the most conspicuous example—in which the charter authorizes the mayor to assume the post of presiding officer; but as a general practice the council is empowered to choose one of its own members for this duty.

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[1] This difficulty is sometimes avoided by having only half as many councilmen at large as there are ward councilmen.

[2] See *above*, p. 281, *footnote*.

[3] *Above*, p. 280.

[4] For a discussion of proportional representation, see *above*, pp. 281-283.

Council Procedure.

City councils everywhere determine their own rules of procedure but in the United States this freedom is often circumscribed by provisions which have been incorporated in the city charter for the purpose of putting an end to sharp practices. In Europe the rules are simple and easy to understand; in American cities they have tended to become a maze of technicalities which encourage smartness at the expense of the uninitiated. The newly-elected councilman, until he masters the various twists and turns of procedure, is at a great disadvantage. The purpose of the rules, both in legislatures and councils, is to expedite business, to ensure a fair and open consideration of measures, and to give the minority a square deal. As the rules are applied, however, they sometimes fail to achieve any of these professed purposes. When the minority members of the council desire to obstruct business the rules often make it too easy for them to do this; but when the leaders of both factions are agreed on any point the same rules facilitate the passage of measures without any real consideration at all. By "unanimous consent" or by a suspension of the rules the council can rush important matters through its calendar at a single session with no opportunity for public protests to be heard. It is for this reason that the procedure of the council is now being determined, to an increasing extent, by definite provisions in the city charter.

Council Committees in Europe.

City councils do most of their routine work through committees. In England, as has been mentioned, these committees have direct supervision over the work of the various municipal departments. Certain committees are statutory, and must be appointed in every borough. The most important of these is the Watch Committee which has charge of municipal police. Of other committees the English council may appoint as many as it pleases. In Germany the joint administrative commissions, in which both branches of the city council are represented, possess a considerable range of administrative authority, but not so much as the council committee in England. In France the council's committees perform administrative functions which are for the most part advisory in character; the committees do not directly control the policy of the departments although their influence is very substantial. One thing all these European countries have in common; the city councils depend upon their various committees for guidance and almost always accept such recommendations as the committees may make. Final action is never taken upon any matter until after consideration by a committee, and although the council is at liberty to reject the committee's conclusions it does not do so except on rare occasions. This is because the committees are composed of men who know a good deal about the subject in hand, the councils having taken great care in selecting them. They choose from among their own membership the men who are best qualified to handle the committee's work—men who by reason of special knowledge or previous official experience know something about the particular field of finance, streets, police, or education, as the case may be. This they are the better able to do because members of the city council throughout European countries are chosen for considerable terms (three, four, or six years) and are frequently re-elected.

Council Committees in America.

In America things are done quite differently. Council committees are constituted on a basis of seniority, political influence, personal favoritism, patronage, compromise, trading, geographical distribution, individual ambition—everything, indeed, but the special competence of the councilmen concerned. It is true that a councilman who has conspicuous qualifications for service on some particular committee may at times find himself a member of it, and may even be its chairman; but such occurrences are few and far between. Some council committees have important duties, and may even control a little patronage, for which reason a place on such committees is eagerly sought. Other committees have almost nothing to do, and nobody desires to be assigned to them. There are not enough desirable assignments to go round, hence the making of the committee-slates is merely a matter of giving the best to the strongest. Councilmen who have the largest amount of political or personal influence get places on the important committees while their less fortunate colleagues must be content with what is left. It is not surprising, under such an arrangement, that misfits are frequent, and that men who have not the remotest qualification by reason of experience, training, or personal interest are often placed at the head of important council committees. The councilman who heads the committee on streets may be a barber or an undertaker by vocation, while a civil engineer, if he happens to be a member of the council, is as likely as not to find himself assigned to some such committee as poor relief, or licenses, or public celebrations.

The Appointment of Committees by the Chair.

Another difference between European and American practice ought to be noted. Council committees in European cities are chosen by the whole council; in America they are named by the presiding officer. The latter uses his authority to reward his leading supporters by giving them desirable positions; it often happens, in fact, that committee assignments are promised in advance and are a part of the bargaining process which determines the choice of a presiding officer. It is not usual for a councilman to serve two successive terms upon the same committee. A change in the party complexion of the council, or even a change in presiding officers, will involve a general shifting of committee memberships. Every councilman, moreover, is looking for a promotion to a more important committee, or to a chairmanship. Consequently there is always a reshuffling after an election. No one, as a rule, stays on the same committee long enough to gain more than an elementary knowledge of the things with which it has to deal. Few, if any members of the committees have a native interest in the matters under discussion at the committee meetings; they are impatient of details, bored by prolonged hearings, unwilling to investigate any question thoroughly, and intolerant of expert advice. There are exceptions to all this, it is true; but the description does not run far wide of the mark when applied to the average council committee in the average American city.

The Small Influence of Committees in America.

Small wonder it is, accordingly, that American city councils are averse to being guided by the recommendations of their committees, and have acquired the habit of rejecting or amending them with a free hand. American city councils bow to no superior knowledge or expertness on the part of their committees, nor, indeed, is there any reason why they should do so in view of the way in which these committees are made up. Why should Alderman A, the lawyer who has been assigned to the committee on printing, give any weight to the opinions of Alderman B, the shoe merchant who, by reason of his political or personal influence, has been named chairman of the committee on public health? One knows quite as much as the other about health matters, or thinks he does. No council committee, therefore, has any assurance that its advice will be accepted by the council, and this encourages the committees to do their work in slipshod fashion. Men do not like to spend time and energy upon a careful and elaborate study of any question when they know that their conclusions will carry no more weight than if they had made no study at all. The strength of the council in European cities is due in large measure to the excellence of the work done by its committees. This in turn, is attributable to three things: the sensible method of constituting the committees, the relative permanence of their membership, and the habit of deferring to the advice of the expert officials.

Powers of City Councils:

The powers of city councils are difficult to summarize, for they cover a varying range in different countries. The council is everywhere designated as the legislative organ of the municipality; but the scope of its legislative authority is far from uniform. This is because the city council is in all countries a subordinate legislative organ and its sphere of action is determined by that of the higher authorities. In the various countries of Continental Europe the practice has been to confer upon the city councils a broad grant of power, leaving them to exercise it under strict administrative supervision. In England on the other hand, and to a greater extent in the United States, the councils have been given a series of specific grants and must keep within the letter of these concessions. The tendency in the United States has been to keep narrowing these grants of authority more and more; in some cases they have become so small that the council is no longer a legislative organ in anything but name.

1. Legislative Powers.

The legislative power of a city council, whatever its scope, is exercised by the enactment of bylaws or ordinances. These enactments have the force of law; they must be passed in accordance with certain prescribed formalities; and in European countries they occasionally require the validation of some higher authority before they become operative. By means of these ordinances or bylaws the city council deals with such matters as the safeguarding of public health, the prevention of fires, the housing regulations, the inspection of food, the licensing of various trades, and so on. The tax rate, the grant of franchises, the organization of various city departments, the salaries of officials—these things are also dealt with, as a rule, by means of bylaws or ordinances unless they are already prescribed by the city charter or by statute. Municipal ordinances in France do not require the mayor's approval, nor do borough bylaws in England. But in those American cities which maintain the mayor-and-council plan of government it is almost an invariable practice to give the mayor a veto power over ordinances passed by the council. On the other hand the ordinance power of the city authorities in the United States, when legally exercised, is conclusive; the approval of no state or national authority is ever required.

2. Financial Powers.

City councils, in the second place, have important financial powers. In all countries the council virtually determines the rate of local taxation (subject to certain general limitations); although it does not have the power to determine what forms of taxation may be levied. The national or state laws almost invariably determine what may be taxed and how. Home rule in municipal taxation has often been advocated and occasionally tried; but the objections to it appear to outbalance the advantages.[1] In English cities the council, through one of its own committees, prepares the budget and in some American municipalities, in Chicago for example, the same plan is followed. In the French communes the budget is prepared by the mayor and the same is now true of many American cities.[2] In all countries, without exception, the municipal budget must be approved by the city council before it goes into effect. No money can be appropriated without its consent. This, indeed, is the one important power of the city council which can be set down as universal. But the degree of freedom with which the council is permitted to exercise this function is not the same everywhere. In England the council's budget-making powers are virtually unfettered. Subject to the practical consideration that some charges (such as interest on the municipal debt) must be provided for in the appropriations, the council may insert, reduce, increase, or delete any item in the municipal budget. In France the municipal budget, after having passed the council, remains inoperative until ratified by the higher authorities. Among American cities there is a great diversity of powers and practice; in some of them the council has all the budgetary freedom that pertains to its English prototype; in others it may reduce or strike out items in the estimates as laid before it but may not insert or increase except under conditions which make such action a virtual impossibility. In a few American cities the real budget-making power belongs to a special board of estimate; the council or board of aldermen merely goes through the formality of ratifying its work.[1]

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[1] It provides a temptation to intercity competition in the endeavor to attract industries by offering exemptions; it leads to discrimination as between different classes of property on political grounds, for example, against property owned by non-residents.

[2] The exceptions include all cities having the commission form of government, all cities which maintain boards of estimate or some similar body for budget making purposes (see *below* p. 450), and a sprinkling of cities which have mayor-and-council government of the orthodox type.

3. Administrative Powers.

European city councils have authority in many matters of an administrative nature, such as the making of appointments; in this field the American city council has almost completely lost all jurisdiction. The American tradition (save in cities which have the commission form of government) is to look upon the council as a strictly legislative organ and to exclude it from all direct participation in the administrative work of city government. In some cities this exclusion has been made absolute and complete.[2] Now this is exactly the reverse of the English tradition and practice, which give the city council full control over local administration. France and the other Continental European countries stand between these two extremes. Their cities have not been definitely committed to the policy of making a clear distinction between legislative and administrative authority, placing each in different hands. Nevertheless they are inclined to recognize the practical desirability of separating the two classes of functions, at least in a general way. Hence the administrative work though subject to the council's influence is not performed by it directly, or by its committees; but it devolved upon officials or administrative commissions.

4. Miscellaneous Powers.

There are other powers with respect to which the authority of the council differs from place to place. Its functions in the matter of franchises, for example, will be discussed later. Miscellaneous powers of great variety would appear in the list if a complete enumeration were made; but it would hardly be worth the making. Members of city councils do not themselves know, as a rule, the exact scope of their authority. In doubtful cases, which frequently arise, they refer the question to the city's law department for an opinion, and the framing of such opinions often involves a long and careful search through the laws and the precedents. Many acts of city councils in all countries have been held *ultra vires* by the courts. American cities in this respect are no worse off than those of Great Britain. About the only way to determine whether a city council does or does not possess a certain power, in some cases, is to exercise it and see what happens. And what very often happens is a lawsuit.

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[1] For a further discussion of municipal budget-making, see Vol. II, Chap. XLIV (Municipal Expenditures).

[2] In the charter of Boston for example, it is made a penal offense for any councilman to attempt interference with the conduct of administrative affairs.

The Future of the City Council.

No Englishman, Frenchman, German, or Italian feels any misgivings about the future of the municipal council in his own country. It is the key-organ of city government in his country and likely to remain so. Nowhere, across the seas, has its powers or prestige suffered any notable decline during the past fifty years. The English borough council is as strong as ever; the same is true of the communal council in France. In Prussia, since the close of the War, the city council has actually increased its control over the course of municipal policy. But Americans are facing an altogether different situation and may well ask: What is the future of the city council to be? For several decades there has been a steady reduction in the council's authority. In another quarter of a century, if this shearing of the council's powers keeps on, it will be a question whether a city council is worth retaining at all. There may be a reaction, of course, and it is also possible that the spread of the city manager plan may assure the council a revivification in American municipal government. But the chances seem to be against anything of the sort. There is more likelihood that the council will weaken the city manager plan than that the plan will strengthen the council. The waning of public confidence in legislative bodies, as at present constituted, is not confined to the cities; it is noticeable in state and nation as well. Where will it ultimately lead? To an all-powerful executive and direct legislation by the people? The question is worth thinking about.

REFERENCES

The organization and powers of city councils in European countries are briefly described in the author's *Government of European Cities* (New York, 1909), France, pp. 16-17, 44-16, 50-62; Germany, pp. 127, 150-162; England, pp. 235, 260-268. Further data may be found in Léon Morgand, *La loi municipale* (8th edition, Paris, 1911), especially Vol. I, pp. 121-498, and in W. H. Dawson, *Municipal Life and Government in Germany* (London, 1914), pp. 58-122.

The evolution of the city council in the United States during the nineteenth century is explained in John A. Fairlie, *Municipal Administration* (New York, 1901), pp. 79-98, 384-398, 426-429. There is a survey of the council's present-day organization and powers in Frank J. Goodnow and F. G. Bates, *Municipal Government* (New York, 1919), ch. ix; and brief discussions of the same topics may also be found in H. G. James, *Local Government in the United States* (New York, 1921), pp. 331-336, and Everett Kimball, *State and Municipal Government in the United States* (Boston, 1922), pp. 409-419. E. D. Durand's article on "Council Government versus Mayor Government" in the *Political Science Quarterly* (Vol. XV, pp. 426-451, 675-709), although published more than twenty years ago, deals with a constantly-recurring question of municipal policy, and a brief discussion of the council's place in the American municipal system is included in the National Municipal League's *New Municipal Program* (New York, 1919), pp. 145-158. R. M. Story's *American Municipal Executive* (Urbana, 1918), contains a good chapter on municipal legislation.

Some important legal questions relating to the city council are dealt with in Eugene McQuillin, *Treatise on the Law of Municipal Corporations* (vols. 1-6, Chicago, 1911; Supplementary vols., 7-8, Chicago, 1922), Vol. II, ch. xiii.

CHAPTER XIX

THE OFFICE OF MAYOR

The Municipal Executive in Various Countries.

At the head of the municipal organization in every European city there is a chief executive official. In Germany he is called the *Bürgermeister,* in Italy the *syndic,* in Spain the *alcalde,* in France the *maire,* in England the mayor. In American cities the chief executive authority is exercised either by a mayor, a municipal commission, or a city manager. Not only their respective designations, however, but the methods by which these various municipal executives are chosen, their terms of office, their powers, and their influence upon the conduct of city affairs are quite different from country to country.

The German Bürgermeister.

In all European countries the titular chief executive of the city is either appointed by the national authorities or chosen by the municipal council, the latter being the more common practice. In no case is he elected by popular vote. In Prussia the *Bürgermeister* is chosen by the city council, usually (but not always) from outside its own membership. His term is rarely less than twelve years, and prior to 1918 the practice of choosing these officials for life terms was common. In the larger cities the *Bürgermeister* is not an ordinary layman but an expert administrator of long experience; he receives a substantial salary and a liberal pension upon retirement; his office is a profession and a career. He presides in the upper branch of the municipal council (the administrative board) and is its most influential member. He does not, however, have any right to veto the acts of either branch; he makes no important appointments, and does not have direct charge of the municipal departments. His function is that of a general supervisor; he is expected to keep all branches of the city administration running smoothly and in harmony. This he must do by his personal guidance and influence rather than by the exercise of legal authority.

The French *maire.*

In France the *maire* is chosen by the city council, invariably from among its own members. His term is four years. The position does not carry any salary but a liberal sum is customarily appropriated by the council to cover official expenses. The *maire* presides at all council meetings and has a vote like other members, but no veto power. He makes most of the important municipal appointments, but the qualifications of the appointees are in most cases strictly fixed by law and do not leave the *maire* a great deal of discretion. Most municipal appointments, moreover, are made without limit of time and there are rarely any vacancies except those due to the death of the incumbent. The *maire* prepares the annual budget for submission to the council and has general charge of the city's expenditures. In the supervision of the various municipal departments, such as streets, water supply or sanitation, he is assisted by one or more adjoints, or assistant mayors, who are likewise chosen by the council from its own membership.

His Dual Position.

The French mayor occupies a dual position. He is not only the head of his municipality but the agent of the national government as well. In the latter capacity he promulgates all decrees issued by the Ministry of the Interior or by the prefect; he is responsible for the preparation of the voters' lists; he has various duties connected with the compilation of census data and other matters of nation-wide importance. Most of this work is done, however, by the permanent officials of the *mairie* or city hall. The mayor is not himself an expert or professional administrator, but he is usually a man who has served for several years as a member of the council and as an adjoint, thus gaining more than a layman's grasp of municipal affairs. As re-elections are frequent, the mayor sometimes becomes a seasoned veteran of the municipal service although he does not and cannot depend upon the city treasury for his livelihood since the office pays no regular salary.

The English Mayor.

In England the position of the mayor is much less influential than in the two Continental countries named. The mayor is chosen by the borough council for a single year, and although re-elections are not uncommon they are far from being the rule. The council is at liberty to choose a mayor from within its own ranks or from outside; it usually follows the former course. The mayor presides at council meetings and has the customary duties of a presiding officer, but he does not name the council's committees, or make any municipal appointments, or control in any way the work of the administrative departments. His concurrence is never essential to the validity of the council's acts. The English mayor receives no salary, but the council is empowered to grant him "such remuneration as it thinks reasonable." This it often does under color of an allowance for official expenses; but the grant is rarely adequate for this purpose. Many demands are directed against the personal pocketbook of an English mayor. He is supposed to entertain all distinguished visitors, to place his name at the head of every subscription list, and to be a patron of every social or philanthropic enterprise in the borough. The position is one of great prestige and prominence, but carries very little authority; its strictly official duties do not require much of the mayor's time. But by tradition he is at the beck and call of every citizen who comes to him with a grievance, or with a request for favors or advice. Election to the mayoralty has been looked upon as a means of honoring a distinguished citizen rather than as a way of securing the performance of designated executive functions.[1] During the past few years, however, the labor party has obtained control in some English boroughs and has chosen both mayor and aldermen from its own ranks. The English mayor is in no sense the agent of the central authorities, as is his namesake across the channel, but he is very often the intermediary between his own borough and the London authorities when important negotiations are being carried on.

The Council's Control of the Mayor in All European Countries.

Now it will be noticed that *Bürgermeisters, maires* and mayors have one feature in common; they are chosen by the municipal council and responsible to it. In that sense they are to the city council what the prime minister is to parliament. It is true that the councils cannot dictate to these officials, after their election, the way in which their duties shall be performed; but situations requiring such action do not, from the nature of things, very often arise. The councils know their men before they choose them. They do not pick officials who are likely to prove intractable. A conservative council selects a mayor of known conservatism; a radically-minded council chooses someone whose mind runs along with its own. In the great majority of cases, taking European cities as a whole, the appointee is someone who has been for many years a councilman, alderman, adjoint, or administrative magistrate. His colleagues have had an opportunity to learn what manner of man he is. There is little chance, accordingly, that they will pick anyone who is likely to indulge in fisticuffs with the council after his inauguration. The ultimate supremacy of the council in France, Germany, and England is not now questioned. In Germany it was sometimes questioned before the war but the situation has been clearer since the upheavals of 1918. The tradition of an independent municipal executive does not exist in any European country.

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[1] In certain of the larger communities he bears the title Lord Mayor. Not infrequently the post is a convenient stepping-stone to knighthood. "The mayor is a portly person, decked in gorgeous apparel, with a queer hat and a gold chain of office and with stoutish, dignified flunkies quaintly dressed, who accompany him in his goings out and his comings in. . . . He does not settle policy, which is done by the majority of the council. And he does not carry out that policy, which is done by the town clerk and the officials under him." C. F. Masterman, *How England is Governed* (New York, 1922), pp. 78-79.

No Such Control Exists in America.

The mayoralty as an independent branch of municipal government is found only in the United States and in Canada, the latter country having taken it from this side of the border. This development of an independent municipal executive in America, is one of outstanding significance in the history of municipal government. It indicates how an ancient office of humble authority, by the simple process of adaptation to a new environment, may entirely change its structure, until in the end it bears no resemblance to the original. The office of mayor in the American city of today has nothing in common with that of one hundred years ago, and little in common with any analogous office abroad. It occupies a unique place among municipal positions. There has been no conscious intent or consistent endeavor to make it so; the unfolding of the American mayoralty has been merely a matter of one short step following another. A small gap between the council and the mayor was first created, then widened, then widened more, until the two branches of the city government found themselves on separate pedestals beyond arm's reach of each other. The annals of government afford no more striking example of political evolution than that which is represented by the rise of this office to prestige and power.

Steps in the Evolution of the American Mayoralty.

Before the Revolution there was a mayor in each of the American boroughs; he was either appointed by the colonial governor or chosen by the borough council from among its own members. He held office for one year but was frequently reappointed. His position and powers were exactly like the English mayor today, the only difference being that his prestige was less and his official duties fewer because the boroughs were small.

1. Direct Popular Election.

In due course, however, the practice of having the mayor elected by direct popular vote came into vogue, and this proved to be the entering wedge in divorcing the mayor from his close alliance with the council. The mayor, although elected by the people, continued to preside at council meetings, and for a time secured no independent authority.

2. Power to Appoint Committees.

But powers soon began to gravitate into his hands. The first important step in this direction was taken when the mayor, as the presiding officer of the council, was permitted to name the standing committees of that body. Just when, and why, the council began to place this function in the hands of its presiding officer cannot be ascertained from the records. In all probability it was a gradual and informal development dictated chiefly by motives of convenience. City councils were not alone in surrendering this duty to the chair; the same transfer took place in Congress and in the state legislatures.[1] At any rate the mayors, when they gained the right to appoint the council's standing committees, were enabled to exercise an indirect influence upon the management of the administrative departments which the committees controlled. On each of these committees the chairman was usually the dominating figure, and the choice of a chairman often determined in advance the policy of a department.

3. Power to Appoint Subordinate City Officials.

From the power to name committees it was neither a long nor an illogical step to the power of appointing the regular administrative officials of the city, and mayors were presently given this right. At first its exercise was made subject to confirmation by the council, but even this check upon the mayor's discretion was eventually shaken off. Step by step, during the middle decades of the nineteenth century the council lost and the mayor gained. In most cities he ceased to preside at the council meetings, withdrew to the seclusion of his own office, and took advice from his own political friends. When he had occasion to deal with the council he did so by sending written messages after the fashion of presidents and governors. Mayors lost no opportunity to stress this analogy, far-fetched though it was. Appealing to the established practice in state and national government, for example, they sought and secured the right to veto the council's acts. With this advance the mayoralty was no longer a subordinate, but a co-ordinate branch of the city government.

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[1] This practice of empowering the presiding officer to name committees is exclusively American. It does not exist in any other country. Obviously it greatly increases the authority and influence of the chair in any deliberative assembly, so much so that there has been in recent years a reaction against the plan. The most notable example of this revulsion was the action of the national House of Representatives, a dozen years ago, in taking away from the Speaker his right to name committees in that body.

Reasons for the Growth of the Mayor's Authority in America.

How is the growth of executive power in American cities during the nineteeth century to be accounted for? Easily enough; the shifting authority from the council chamber to the executive office, gained its impulse from two sources. On the one hand there existed a popular conviction that the city council, being a deliberative or legislative body by nature, should not be permitted to control the purely administrative affairs of the municipality. Wherever this conviction prevailed the mayors were bound to gain, for the administrative functions of American municipalities were expanding more rapidly than their purely legislative requirements. The inclination to follow a principle, so characteristic of the American mind in political matters, dictated that the new administrative functions, as they arose, should be given to the mayor. There was also a very practical consideration, namely, that what the councils did they usually did badly, while what the mayors did they did fairly well. Councils delayed and evaded; mayors acted promptly and in the open. This greater efficiency of the executive was natural, for councilmen and aldermen were elected by wards, invariably on a partisan basis, and often by methods in which corruption played a large part. Mayoral elections were not always honestly conducted, to be sure, but the mayor was in any case the choice of a large electorate and could take into view the interests of the city as a whole. The councils, again, were unprovided with any official leadership, and the absence of recognized leaders within their own ranks gave the ward boss his opportunity. The subservience of the aldermen to invisible outside influences became everywhere apparent. Handicapped in these various ways the council was bound to lose in its rivalry with the mayor, and lose it did at one point after another. By the close of the nineteenth century the mayor had captured most of the strategic positions; he had become the head of the municipal system in fact as in name.

Effects of the Separation of Powers in City Government.

But this drawing of a hard and fast distinction between legislative and administrative functions did not conduce to the smooth working of municipal machinery. In the national government, where public policy is largely determined by the process of legislation, the principle of division of powers establishes a fair balance, and the same is true, although to a perceptibly less degree, in state government. But in the cities, where the making of ordinances constitutes a very small part of the whole field of governmental activity, the division is grossly unequal. It gives the mayor much and the council little. It places the council in a position where, not having enough legislative business to do, its members persist in meddling with things outside their assigned range of jurisdiction. The result has been, too often, a series of prolonged squabbles with the mayor and his administrative subordinates, leading to deadlock between the two branches of the city government. Division of powers in city government has tended to foster mutual hostility, not co-operation, between the legislative and executive branches.

The Reaction Against It.

In due course, therefore, students of municipal government began to wonder whether the system of checks and balances, as embodied in city charters, was not a hindrance rather than a help. Their cogitations on this point were presently illuminated by the experience of Galveston during the opening years of the twentieth century. The action of that Texan city, in completely discarding the principle of divided powers, marked the inauguration of a new era in charter-making. The commission form of government as established in Galveston combined the customary functions of both mayor and council in a single body of five elective commissioners. This plan, as will be shown later, spread through the United States during the years 1901-1914, overturning mayor-and-council governments as it went. Out of it, in later years, has developed another plan of municipal government, the city manager plan, which also repudiates the doctrine of an independent executive.

The performance of the higher administrative functions in various American cities, therefore, is now provided for in four

The Present Variety of American Municipal Executives: 1. The Strong Executive.

different ways. In some cities the mayor is given complete charge of all the administrative work, the council being ousted from any share in it. This is the plan pursued in New York, Boston, and many other cities, large and small. For lack of a better name it may be called the "strong executive" type of municipal organization. In other cities the mayor is given a limited range of administrative power, the council retaining a considerable hold upon him. The mayor appoints the city officials, for example; but his appointments do not become valid until confirmed by the council; he may also remove officials, but only with the council's concurrence. The council in these cities, moreover, retains a good deal of authority in relation to budget-making, the granting of franchises, and the awarding of contracts. This system, of which Chicago, Philadelphia and Los Angeles afford good illustrations, may be differentiated as the "limited executive" type of city administration. Third, there is the commission plan of government which several hundred American cities have adopted, and of which more will be said later on. Under this plan the administrative functions are divided among five commissioners, hence it may be called the "decentralized executive" type. The most conspicuous examples are Buffalo, New Orleans, and St. Paul. Finally, the city manager plan provides an arrangement by which ultimate supervision of the city's administrative work is devolved upon a manager whom the council appoints and to whom he is responsible.[1] This may be called the "dependent executive" type; it is illustrated by the charters of Cleveland and Dayton.

2. The Limited Executive.

3. The Decentralized Executive.

4. The Dependent Executive.

It will be seen, accordingly, that American cities are far from unanimity as to the proper position and responsibility of the executive authority. Whether it should be strong or weak, centralized or decentralized, responsible or independent, they are not agreed. Nowhere in the whole range of American governmental practice is there greater divergence than here.

How the Mayor is Chosen.

In all American cities which maintain the office of mayor, this official is elected by the people. Nominations are made by convention, by primary elections of various types, or by petition, as the case may be. The primary method is the one most widely used. The election is by secret ballot and a plurality is sufficient. Preferential ballots are used in a few cities but the results have not been altogether satisfactory.[1] No plan of proportional representation can be employed in mayoralty elections since there is only one candidate to be chosen.

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[1] In commission-governed, and in city-manager cities it is not uncommon to have a titular "mayor" without special executive powers.

The mayor's term is four years in most of the large cities; in small communities it is usually two years. A few cities still elect their mayors annually. The tendency everywhere is to lengthen the mayor's term. In some cities there is a provision for recalling the mayor from office by means of an adverse popular vote before his term has expired. Ordinarily a mayor is eligible for re-election, but in a few cities he is not permitted to succeed himself.[2] The purpose of this prohibition is to prevent him from using the powers and patronage of his office to build up a personal machine when he ought to be giving his whole attention to the city's business.

The Weakening of Party Lines in Mayoral Elections.

American mayoralty elections, a generation ago, were almost everywhere fought out on strictly partisan lines. Candidates were nominated by party conventions and were elected by the strength of the party organizations. This is still true in some cities; but the maintenance of party discipline in municipal contests has become increasingly difficult during recent years. This is due to the spread of the non-partisan primary, the removal of party designations from the municipal ballot, and the simplification of the ballot in other ways. It is also the outcome of a popular disinclination to be guided solely by party principles or party platforms. The voters of American cities are nowadays inclined to be influenced by the personality of the candidate quite as much as by the fact that he bears the label of a certain political party. Municipal campaigns are becoming less partisan and more personal. With increasing frequency it now happens that Democratic cities elect Republican mayors and *vice versa*. In city elections there is a larger element of party independence than in state or national campaigns. The dominant party cannot be sure of winning with a weak candidate.

The Powers of the American Mayor:

The powers which attach to the mayor's office are not easy to state in concise form, since they differ considerably from one

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[1] See *above*, p. 280.

[2] In Philadelphia and in Boston for example.

1. Powers in Connection With the City's Legislative Work.

city to another. The mayor is commonly spoken of as an executive or administrative officer with no share in the legislative work of the city, but this description does not always fit the case. It is true that he is not usually a member of the city council, but this does prevent his having an important influence upon the council's actions, an influence which is both constructive and preventive. For one thing he may recommend measures to the council at any time. This he may do by personally appearing before or, as is more commonly the practice, by sending a written communication.[1] The right to suggest and recommend does not in itself mean much, but it is a poor mayor who does not have some active supporters among the councilmen.

(*a*) The Power to Recommend.

These councilmen are consulted before the recommendations go forward, so that the mayor is able to feel out the prospects before he acts. What a city council will do with the mayor's recommendations depends not only upon the merits of the matter itself, but to an even greater degree upon the mayor's personal and political influence among the councilmen. In any case the average councilman stands to gain very little, either for himself or for his constituents, by incurring the mayor's displeasure. If he can bargain his support of the mayor's proposals for something tangible in the way of patronage, he is under a strong temptation to do it. So whatever the theory of the office may be, the actual influence of the mayor, even in matters of a strictly legislative nature, must not be disregarded by anyone who desires to know how the city's affairs are really handled, whether in the chamber or the ante-chamber. Through his intermediaries the mayor is sometimes a very influential participant in the making of municipal ordinances.

(*b*) The Power to Veto.

The right to suggest and recommend gives the mayor a positive influence over the course of municipal ordinance making. But he has another channel of influence which is preventive or restraining. This is afforded by his right to veto the council's actions. The qualified veto-power, as it exists in most American cities, is fashioned after the device which the framers of the federal constitution worked out in 1787 and which has since found its way into practically all the state constitutions as well. The usual provision in city charters is that every ordinance, resolution, or order which has been duly acted upon by the council must go to the mayor for his approval. If he approves the measure, he appends his signature and it becomes effective. But if he does not give his approval he returns the measure to the council, unsigned, with a statement of his objections. This he must do within a prescribed number of days, otherwise his approval is taken for granted. When the measure comes back to the council this body takes a vote on the question of repassing it over the mayor's veto, the usual requirement for repassage being a two-thirds majority.[1] Under normal conditions this is a difficult requirement to meet, and the mayor's veto usually stands. The possession of this power has contributed greatly to the dominating influence of the mayor in all matters of municipal legislation.[2]

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[1] For a discussion of mayors' messages see R. M. Story, *The American Municipal Executive* (Urbana, 1918), pp. 122-123.

The Right to Recommend Legislation Can be Justified.

What are the merits of this executive participation in the process of municipal lawmaking? A distinction should be made, in any attempt to answer that question, between the mayor's right to recommend and his right to veto. The former is a right to which no serious objection can be raised; the right to petition the council and to suggest action is one that every citizen possesses. That being the case there is no good reason why it should be denied the mayor. It would be hard to maintain the proposition that a mayor should be forbidden to suggest anything to the council because such suggestion, owing to the mayor's prestige and influence, is likely to be favorably acted upon.

But the Mayor's Veto Power Cannot.

But the veto power stands on a different footing. The qualified veto is an American invention, devised by the framers of the national and state constitutions as a flywheel in the mechanism of checks and balances. It was intended to provide a safeguard against the development of legislative tyranny. It was an application of Montesquieu's dogma that "power should be a check to power." From the national and state constitutions, however, the device worked its way down into the municipal system where no conceivable danger of legislative despotism existed at all. The natural safeguard against any serious abuse of governmental powers in the cities is the supremacy of the state; its legislature can apply the brakes when needed. There was never any need for supplementing this security by making the powers of the mayor and those of the council an automatic counterpoise each to each. Nevertheless the veto became a part of the municipal mechanism and such it continues to be in many cities down to the present day.

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[1] Some cities have an even higher requirement—three-fourths, or seven-ninths. In Boston the mayor's veto is absolute and cannot be overridden even by unanimous vote of the council.

[2] Some writers have spoken of the veto as an *executive* power, but it is difficult to see how that classification of it can be maintained. It is an integral part of the *legislative* process.

Our Experience With Mayoral Vetoes, Good and Bad.

Having had a large experience with the veto power in cities during a period of nearly a hundred years, Americans should be in a position to pass favorable or unfavorable judgment upon it. But opinions still differ as to its value, or lack of value. Many illustrations of its usefulness can easily be brought forward. Undoubtedly it has promoted the interests of honest and economical government in many cities upon numerous occasions. Without having this weapon at hand many honest mayors would not have been able to prevent the granting of valuable franchises without proper restrictions, or the journeyings of council committees upon expensive junkets, or the multiplication of needless positions on the city payroll—all of which they have throttled at times by the use of the veto power. But a potential instrument for good can usually be transformed on occasions into an agency of harm, and the mayor's veto power has often been used unfairly, unwisely, or even corruptly. The mayor who sets out to browbeat a city council into submission, or to make political trades with it, finds in the veto a shield and buckler. By vetoes or threats of vetoes he can cudgel a council until its members are ready to seek terms and talk compromise with him. Mayors have actually done this in many cities and on many occasions. In such pitched battles between the mayor and council the public interest stands little chance to profit. Business is delayed; the ultimate compromise satisfies nobody, and worst of all is the evasion of responsibility which this counter-play facilitates. In conflicts between the mayor and council over the exercise of the veto power there is usually some right and some wrong on both sides, but the merits of the particular issue are always lost in the bedlam of recriminations and personalities.

2. Power to Appoint Subordinate Administrative Officials.

Among the mayor's administrative powers the most important is that of making municipal appointments. It is still the practice, in many cities, to elect by popular vote certain heads of departments and members of boards, but the number of officials chosen in this way is much smaller than it used to be. There is a strong conviction among the people, that certain financial officers—the city comptroller and the city treasurer, for example—ought to be directly elected in order that they may be free from the control of any appointing authority. Members of the school board are also elected by popular vote in many cities, this method being maintained in order to ensure a representation of all classes in the determination of educational policy. The school board, in turn, appoints the superintendent and other school officials. With these and some other exceptions, however, the power to name the chief administrative officials of the municipality usually rests with the mayor. The mayor's appointing authority has been steadily widening in those cities which retain the mayor-and-council form of government. In commission-governed cities all appointments are made by the commission; under the commission-manager or city-manager plan of government the making of appointments is devolved upon the manager.

The Requirement of Council Confirmation.

When appointments are made by a city commission or by a city manager no confirmation by any other authority is required. But the mayor does not always have this freedom. In cities of the "limited executive" type, the mayor's appointments go before the city council for confirmation by that body and do not become valid until so ratified. This procedure is another illustration of the influence which the example of the national government has exerted upon city charters in the United States. The plan of senatorial confirmation in the case of presidential appointments has some merits; but the analogous arrangement with respect to appointments made by mayors has worked very badly. This is largely because entirely different traditions have determined the practice of confirmation in the two spheres of government. The Senate of the United States, although constitutionally free to confirm or reject all presidential appointments at will, has used its prerogative of rejection sparingly. Not one appointment in a hundred, on the average, has been denied confirmation. In the case of members of the cabinet it has confirmed the President's selections as a matter of course. During more than eighty years it has never refused its approval to any cabinet appointment. The Senate has taken the rational ground that since the President is responsible for the conduct

Our Experience With It.

of executive affairs he ought to have a free hand in the selection of his immediate advisors and associates. City councils have developed no such tradition. They confirm or reject as the spirit moves them. If the mayor and the majority of the council's membership belong to the same political faction, appointments are usually confirmed without hesitation no matter how poor their quality may be; but when these two organs of government are at variance the power to reject will be freely used upon good and bad appointments alike. Experience shows this to be the rule, although there are occasional exceptions.

Its Abuses.

The requirement of council confirmation was intended to place a check upon any mayor who might set out to build up a personal machine by placing his strongest supporters in immediate control of the city departments, with large amounts of patronage at their disposal; but it has not accomplished much in that direction. It has not prevented, on the whole, the making of partisan or inferior appointments. Council confirmation has afforded no security against the spoils system; on the contrary it has rather encouraged the bestowal of public office as a reward for partisan service. City councils, to a greater extent than mayors, have been under boss-domination. In order to get their appointees confirmed, mayors have had to deal with the unseen hands behind the council. The worst vice of the system is the way in which it lends itself to the evasion of responsibility for an unpopular appointment. When the press and the public cry out against any such action the mayor proclaims that the fault is not his, that he could not leave the office unfilled, and that he was forced to appoint the obnoxious individual because the council would not confirm anyone else.[1]

Its Gradual Abandonment.

But despite the hollowness of the results obtained from aldermanic confirmation, cities are not easily persuaded to give it up. They are abandoning it very slowly. New York abolished the requirement of confirmation in 1901; Boston followed eight years later.[1] But Chicago, Philadelphia,[2] St. Louis, Baltimore, Detroit and Los Angeles still retain it.[3] The same is true of many smaller cities which retain the mayor-and-council form of government. There is a deep-seated conviction in the popular mind that it is dangerous to give the mayor a free hand in the making of appointments. This conviction, however, finds little or nothing in American municipal experience to support it. The wrong sort of mayor will manage to get the wrong sort of men into office, confirmation or no confirmation. New York and Chicago, under altogether different charter provisions, have afforded good illustrations of this in recent years. On the other hand the right sort of mayor, in his endeavor to make the best sort of appointments, is almost certain to find the requirement of confirmation a serious obstacle in his way. It is an arrangement which affords inadequate protection against the bad; and furnishes no incentive to the good. It is merely one of our various mechanical substitutes for official honesty, intelligence, and patriotism.

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[1] The charters of those cities which require the council's confirmation in the case of appointments usually provide that its concurrence shall also be necessary in the case of removals made by the mayor. This is a radical departure from the national analogy. The President has power to remove any federal officer of administration; the approval of the Senate for such action is not needed. The practice of requiring the council's concurrence in cities, when the mayor deems the removal of any municipal officer to be desirable, has been productive of much friction and not a little harm. It is now being generally abolished.

3. Powers in Relation to the Municipal Budget.

The third outstanding function of the mayor, in many American cities (but not in the majority of them) is that of preparing a statement of estimated revenues and expenditures for submission to the council in the form of a tentative budget. Originally this duty was everywhere regarded as a legislative function, to be performed by the city council through its committees. It is still so regarded in English municipalities and in some American cities as well. In Congress and in the state legislatures the initiative in preparing the list of appropriations remained until recent years with various legislative committees. But in no branch of American government has this plan of budget-making given satisfaction, and least of all has it done so in those cities where members of the council are chosen by wards. In such cases the process of budget-making has usually resolved itself into a chaos of sectional grabs. Even where the councilmen are elected at large the plan has lent itself to the evasion of responsibility for extravagant expenditures. There has developed in recent years, accordingly, a disposition to designate budget-making as an executive function and to vest it in the hands of the mayor. In a few cities it has been given to a special budget-making board with the mayor as chairman.[1] But whether the budget is prepared in the first instance by the mayor alone, or by a board constituted for this purpose, it must in all cases be submitted to the city council for its approval. To that extent the voting of appropriations remains a legislative function.

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[1] In Boston all appointments made by the mayor to headships of departments must be submitted for approval to the Massachusetts Department of Civil Service—a state department. For a discussion of this arrangement see Vol. II, Chap. XXIII.

[2] Although the amendments which were made to the Philadelphia charter in 1919 increased the authority of the mayor and diminished that of the city council, the mayor's appointments are still subject to confirmation by the council in that city.

[3] Under the new Cleveland charter, which comes into force on January 1, 1924, appointments made by the city manager will not be subject to the requirement of confirmation by the council.

The Extent to Which This Power is Shared With the City Council.

But the discretion of the city council or board of aldermen with respect to changes in the tentative budget, as laid before it, is not always unshackled. In New York the aldermen can reduce or strike out but cannot increase any item or insert any new appropriation. If they reduce or strike out any item, their action is subject to veto by the mayor, whose veto cannot be overridden in such cases save by a three-fourths majority. In Boston the council can take no action upon the budget submitted to it by the mayor, other than to strike out or reduce items, and even here the mayor's veto power applies and cannot be overridden. In Philadelphia the council is free to amend the tentative budget as it pleases; the mayor's veto power being the only check upon its discretion. In Chicago the budget is prepared in the first instance by the finance committee of the city council with the help of the comptroller, and is voted by the council before it goes to the mayor. The latter may veto the budget as a whole, or any part of it, but may not increase or reduce any item.[2]

The Mayor is Steadily Gaining the Lion's Share.

In the smaller cities the functions of the mayor, as regards the control of appropriations, display even more variation than in the larger ones just named. But the tendency is to place the preparation of the budget in the hands of the mayor and to reduce, step by step, the council's power to make additions to it after it has left the mayor's office. The right to strike out or to reduce items in a municipal budget is a hollow prerogative from the council's point of view. City councils, as a rule, are not greatly interested in eliminating or cutting down expenditures.

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[1] The Board of Estimate and Apportionment in New York City (see p. 450) affords a good illustration.

[2] For a further discussion, see Vol. II, Chap. XLIV.

Most councilmen are seeking public improvements for their own districts, or other things which involve increased outlays; they see no reason why money should be left in the city treasury when it might be "put into circulation." So, when the city council or board of aldermen is restricted to the power of making reductions, it can usually be counted upon to make no changes in the budget at all. Nevertheless the right to reduce taxation is there if they want to exercise it, and the hallowed principle that "no taxes shall be imposed upon the people save by action of their representatives" is in theory preserved. For does not the tax-rate depend upon the appropriations; and does not the council, by its acquiescence in the appropriations, assume the responsibility for fixing it? Meanwhile the real responsibility for both appropriations and the tax-rate belongs in many American cities to the mayor.[1]

4. Powers of a Miscellaneous Sort.

The chief municipal executive in all countries has a variety of miscellaneous functions and duties, including many of a social nature. In American cities the mayor is usually charged with the duty of "supervising" the administrative work of the municipality; but unless he has adequate power with respect to appointments, removals, and appropriations this general grant of authority to supervise does not amount to much. The duty of approving contracts is also, in some cities, imposed upon the mayor; but charter-provisions relating to the award of contracts have now become so strict that he no longer possesses much discretion in this field. Social duties of a varied character, welcoming distinguished visitors to the city, speaking at all manner of public and semi-public functions, listening to deputations and individuals who come with grievances, or with requests and recommendations,—these things take up a great deal of the mayor's time. They leave him all-too-little for the careful and orderly consideration of strictly official business.

The Heavy Demands On His Time.

In American cities the mayor's position as a party leader, or as the head of a political or personal machine, also provides

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[1] Under the commission form of government, the budget is made up and voted by the commission as a whole; but the preliminary figuring is usually done by the individual commissioner who is in charge of the financial department. Final action in voting the appropriations is taken by a majority of the commission. Under the city manager plan, the manager prepares the budget but the council or commission is free to modify his figures as it pleases, there being no veto power to interfere with its discretion.

The Mayor as a Party Leader.

work for him to do. No inconsiderable portion of his time, in some cities, is devoted to "keeping his political fences in repair." Some mayors spend a large portion of each day at a desk in an inner office, and go out among the people as little as possible. Mayor Mitchel of New York pursued this policy, attending strictly to official business all day and every day. People soon began to say that he was cold-blooded, an icicle, a poor mixer. Mayor Tom L. Johnson of Cleveland went to the other extreme. He argued that a quarter of an hour each day was enough time for any mayor to spend at his desk, enough to sign important documents and to give general instructions. A competent secretary could do the rest. The mayor's place, according to Johnson, was "out among the people." In English cities the mayors spend none of their energies in politics, in France the *maire* spends very little unless he has ambitions to become a member of the Chamber of Deputies.

The Cost of Being a Mayor.

Although the salary which attaches to the mayor's position is fairly liberal as official salaries go in the United States, it does not often suffice to cover the numerous and heavy demands upon his check-book. Very few honest mayors leave office richer in anything but experience. Getting elected costs something—often a good deal. Even though the bulk of the campaign fund be provided by personal friends or political supporters, the personal expenses of the candidate are bound to be considerable. While in office a mayor is beset with requests for contributions from every source. Every philanthropic enterprise requests his endorsement and subscription. It is difficult to refuse them all, or even most of them, without acquiring a reputation for closefistedness. A mayor who pleads penury is rated as not being a good fellow. Such an impression among the people militates against re-election and is an obstacle to any further political ambitions he may have; so it is to be avoided even where the expense of avoiding it is heavy. The mayor who tries to do all that he is asked to do, and yet to make both ends of his official salary meet, is bound to have a hard time of it.

How the Office Can Be Used for Profit.

On the other hand, the opportunity to use his official position for private gain, directly or indirectly, is always open to any American mayor who possesses a sufficiently flexible conscience. It is always possible for the chief executive of any large city to make large earnings in a roundabout way while keeping within the letter of the statutes. He can become a silent partner in some legitimate business enterprise, the success of which depends upon the friendliness of the public authorities. He can use his advance information concerning proposed public improvements to dabble in real estate, through the intermediary of his relatives or close friends. He can obtain tips on profitable investments from men in financial circles who desire to gain or to hold his favor. The channels of potential profit are many; whole pages might be filled in an enumeration of them. A certain American mayor during his four years in office, retained the ownership of a small weekly newspaper which he had been publishing before his election. It was a news organ of no account; but its pages overflowed with advertisements, many of them inserted by public service corporations, paving contractors, vendors of fire apparatus and so on. It was an open secret that no one stood much chance of obtaining any contract or selling supplies to the city unless he contributed handsomely to the advertising patronage of this particular organ. Some diacritical folk stigmatized this procedure as highly reprehensible; but there is no law which prevents a mayor from owning a newspaper, and it is certainly no crime to advertise.

Working the Stock Market.

Large corporations are easy prey in crooked politics. When other things fail, a newly-elected mayor can always start a campaign against the public-service companies. He can go after them like a crusader, insisting upon an investigation of their methods, finances, and franchises. This, of course, will make investors uneasy, and the stock of such corporations will depreciate, for its market value is very sensitive to the attitude of the public authorities. Close friends of the mayor can then take advantage of the opportunity to buy it on a slender margin, whereupon the attacks begin to lose their virulence, the stock recovers in value, and the inner ring takes its profit. Speculating in public ultility stocks on the strength of probable official action is not confined to mayors or aldermen. Members of state legislatures have been known to take a hand in it, as a recent Massachusetts investigation has shown. At any rate there is no need to multiply illustrations of how public office may be made to yield private gain. The marvel is that so few public officials succumb to the temptation. One of the weaknesses of American municipal democracy is that it tolerates a condition of affairs in which high-minded men must serve in office at a financial sacrifice, while those who have no scruples can enrich themselves without much risk of getting caught in the talons of the law. Official salaries ought to be larger than they are.

The Mayor is Usually a Professional in America—a Professional Politician.

The exacting duties of the mayor's office, particularly in the bigger cities, call for a high degree of intelligence and judgment, a knowledge of men, and for habits of personal industry. But the method by which mayors are selected does not lend itself to the choice of men possessing these qualities. Personal popularity, even though it be of the bizarre type, counts for more at the polls than administrative capacity. The man who catches the ear of the people with an array of promises, or an ingenious appeal to their prejudices, is almost certain to get more votes than the one who disdains this method of electioneering. The mayor's position calls for a skilled administrator; what the city gets is a skilled politician. Even in the largest cities, where the mayor's powers are great and where so much depends upon the making of wise selections, it is not often that the chief executive post goes to one who would be entrusted with any large amount of authority or responsibility in the field of competitive business. Few men of broad-gauge ability are ever candidates for the office and still fewer are ever elected. Too many sparrows perch on this eagle's roost.

Few Mayors Go Any Higher.

The office of mayor ought to be a training school for higher positions in the service of the state and nation, but it has not been so. During the past forty years we have had nearly three hundred mayors in the twenty largest cities of the United States. Most of them merely abode their destined hour and went their way. Exceedingly few among this large number obtained national reputations by reason of their skill or services. These conspicuous exceptions merely illuminate the general rule. Grover Cleveland served one term as mayor of Buffalo on his way to the governorship of New York, and, ultimately, to the White House. Newton D. Baker, Secretary of War from 1916 to 1921, was twice mayor of Cleveland. Brand Whitlock was four times elected mayor of Toledo before his appointment to the diplomatic service. A few others, less well known, might be mentioned if one were making a complete list. Some ex-mayors in different parts of the country have obtained a modest degree of distinction as state officials, judges of state courts, or congressmen; but even here the proportion of the total is small. How many mayors of New York, Philadelphia, Detroit, Cleveland, St. Louis, Boston or Baltimore have risen to the post of governor during the past forty years? In Chicago the promotion has happened only once during that time. Yet this ought to be the natural order of promotion. A term as chief executive in a great city ought to be the best possible preparation for the subsequent performance of executive duties in the state.

The Reasons for This.

Why is it that American mayors so rarely manage to go any farther upward in the public service? One reason is to be found, no doubt, in the fact that the mayor's office does not usually attract the type of man whose personality appeals to the rural voter. The garish brand of popularity which seems to count with large elements of the urban electorate makes no such impression upon the people who live on the land. They are not so easily swayed by a glib tongue which merely prattles some older nothings in a newer way. The rural voter mistrusts the city, its motives, its methods, and its mayors. It is not a mere accident that the political complexion of the larger cities is so often different from that of the states in which they are located. The urban and the rural voter are inclined to look at things from different angles. The type of candidate that appeals most strongly to the one does not usually appeal to the other.

The popularity which carries a mayor into office, moreover, is as fleeting as a flashlight. It may vanish in a day, and in any event is likely to do so long before his term comes to an end. No mayor can satisfy everybody, especially among the politicians who hover on his flanks. The people of the whole city look to him for what they want and blame him for what they do not get. As a rule they give little attention to the work of the city council; it is the leadership that interests them. In the state and national governments the legislative bodies bulk large; the public eye is turned toward them much of the time; they are convenient depositories for any responsibility that executive may desire to avoid. But in the cities this is not the case, at any rate not to the same extent. The mayor cannot so readily plead in avoidance, stand neutral, or evade. He must come out squarely on one side or the other, which means that he must create antagonisms. It may be replied that by taking firm ground and shouldering responsibility a mayor will gain as well as lose followers. That ought to be the case, but as a matter of practical politics it usually is not. Many of the questions upon which a mayor must pass final judgment do not interest the people of the city as a whole. They are of deep concern to neighborhoods, or to certain elements of the population, or to particular individuals. It is quite easy for a mayor to create many centers of resentment without gaining any counterbalancing appreciation from the citizens at large. That, indeed, is what the honest and capable mayor often succeeds in doing. He gains a reputation for being "no man's man" by diminishing his own strength as a vote getter. Party leaders do not place a high valuation on the political availability of any mayor who follows his own counsel and pay no attention to the political consequences of his acts. They prefer one who is tractable, regular, easy to reach,—an "organization man." So the mayor who harbors an ambition to go higher on the political ladder finds himself on the horns of a dilemma. If he works in harmony with the party leaders, the independents will set him down as a mollycoddle, and call him a rubber stamp. If he does not work in harmony with them, he will incur their wrath and opposition. In either case he lessens his chances of success as a candidate for any other public office.

The future of this office will be interesting to watch. For fifty years the American mayoralty has been steadily gaining in power; today it has no counterpart in any other country. The mayor of New York City is the most powerful municipal officer in the world. Within his own sphere he is as nearly absolute as any monarch could be. He has larger powers than pertain to the governor in most of the states, or to what is left of royalty in Europe. Is this process of concentrating power in the hands of the mayor to keep on? When and where will it stop? And what sort of office will the mayor occupy if it does not stop?

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CHAPTER XX[illegible]

COMMISSION GOVERNMENT

European Municipal Systems Have Undergone No Radical Change for a Long Time.

In none of the chief countries of Western Europe has there been any radical reconstruction of the municipal system during the past three-quarters of a century. The framework of local government in France is still as Napoleon left it; for although the suffrage has been widened and the communal officers made more directly responsible to the people, the distribution of powers among prefects, sub-prefects, mayors, adjoints, and councils has not been appreciably altered. In England, likewise, the general plan of borough government has stood unchanged since 1835 although there have been far-reaching changes in the allocation of powers among various branches of the national government since that time.[1] Germany, a few years ago, passed through a revolution which wrought great changes both in the form and the spirit of national government, but the upheavals of 1918-1919 did not badly upset the old structure of city administration. Burgomasters, administrative boards, and municipal councils retain their old apportionment of authority; the chief difference between the old régime and the new is that these officials are now more responsible to the will of the whole city electorate.[2] The systems of local government in the various European countries have shown a remarkable degree of stability and permanence.

Contrast This with the Great Transformation in America.

In the United States the municipal historian has a different tale to narrate. The general outlines of municipal government in American cities bear very little resemblance to those of seventy-five years ago. Great changes have been brought about in the relation of the cities to the state, in the organs of municipal government and in their adjustment to one another, in the powers of local authorities, and in the distribution of these powers. The center of gravity has been shifted from one location to another. The process of evolution has been going on for three-quarters of a century, not steadily but by fits and starts. It is still going on, with no assurance that the American municipal system is soon to become stabilized. One can fairly say, indeed, that America has been and continues to be the world's foremost laboratory for experiments in new forms of municipal government. More new schemes and devices have been given a trial in the United States than in all other countries put together.

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[1] For example, by the Parliament Act of 1911 which trimmed the ancient prerogatives of the House of Lords.

[2] The abolition of the three-class system in Prussia and the establishment of universal, equal, secret, direct suffrage in every German city have placed the municipal system on a democratic basis.

Reasons for the Difference:

1. The Friction Engendered by Division of Powers.

There are two reasons why this has been the case. The first is to be found in the faultiness of the basic principle upon which the American municipal system was constituted during the earlier part of the nineteenth century, namely, the principle of checks and balances, another name for which is the principle of confusion, delay, and irresponsibility. A system of "checks and deficits," someone has called it. So long as the framers of city charters clung to a strict application of this principle they promoted an attitude of non-cooperation among the various organs of municipal government which precluded the achievement of satisfactory results even when honest and capable men were installed in office. This persistent inharmony among municipal officers, developing into open hostility and deadlocks at times, made the cities restive and inspired them to seek relief by changes in the mechanism of their governments. Like a sick man tossing upon his couch they turned from one side to the other in the endeavor to ease their pains. Reluctant to have a major operation performed, and the prime cause of their troubles exorcised, this quest for alleviation was for the most part fruitless until after the nineteenth century had come to a close. European cities, of course, had no such incentive to experimentation. Their systems of government, while displaying many incidental shortcomings, were solidly grounded upon the principle of unified powers and centralized responsibility.

The second reason for the unceasing process of municipal experimentation in America may be found in the general impression that when things go wrong in the body politic it is the function of the law and the lawyers to set them right. It matters not that many abuses will work out their own cure if given

2. The Passion for Piecemeal Reform.

time. The average American is impatient of remedies which require the lapse of years; he wants them applied at once by due process of law. So we have kept the legislators and chartermakers busy. We have transferred the appointing power from the city council to the people, and from the people to the mayor—in a few instances from the mayor to the governor, or to the courts. We have shifted the control of the administrative departments from council committees to elective boards, and from these, again, to appointive commissioners. We have substituted election-at-large for election-by-wards, abolished the bicameral system, reformed the methods of nomination, shortened the ballot, and provided securities against corrupt practices at elections. It is arguable, of course, that these various reforms were productive of something in the way of results, but they did not go to the root of the problem. When a motor car, by reason of a faulty design, needs a general overhauling there is not much to be gained by merely tinkering with the carburetor, the magneto, or the timing gears. The American municipal system, during the closing years of the nineteenth century, needed a general overhauling. It was constructed on a faulty model.

The Galveston Precedent.

It was not until 1901, however, that this need came to be clearly recognized. Prior to this date some of the more courageous among reformers had come to the conclusion that the whole municipal system would have to be rebuilt from the ground up; but their preachings fell upon deaf ears until after Galveston, driven to heroic measures by a serious emergency, proceeded to demonstrate how the overhauling might be done. Galveston's abandonment of the old municipal organization, moreover, came at the right psychological moment.[1] Popular dissatisfaction with the conduct of municipal affairs throughout the country had about reached its climax. The country was on the eve of a general civic awakening which profoundly influenced the whole tenor of American public policy before it had run its course.[1] The impatience of the people with politicians, and with the methods of politicians, was about to make itself felt in all domains of American government. Galveston merely chanced to be the harbinger of a new era in American municipal philosophy.

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[1] Long before 1901 several cities had tried experiments quite similar to the Galveston plan but their example was not generally followed by other municipalities. New Orleans established in 1870 what was virtually a commission form of government, but abolished it twelve years later. Mobile set up in 1873 a plan which was the same in principle but differed in details, and abandoned it in 1887. Memphis tided over a serious emergency by establishing commission government in 1879 but reverted to mayor-and-council government in 1891. The moment for inaugurating a general reconstruction of municipal government throughout the country was not opportune and did not become so until the turn of the century.

How the Commission Plan Originated.

Galveston is the chief seaport of Texas and one of the leading commercial centers of the South. Its population in 1900 was about 37,000, of whom nearly a fourth were negroes. The government of the city was no better and no worse than that of many other American communities of its size and type. This, of course, is not high praise. The old Galveston charter provided for a mayor, various elective officials, and a board of aldermen (elected by wards), each with independent powers. Elections were conducted on a partisan basis and the Democratic candidates invariably won by a wide margin. There was no merit system, no executive budget, and no provision for the use of business methods in the city departments. All the standard varieties of municipal mismanagement found exemplification at the city hall. Politicians monopolized the offices; the tax rate was high; the citizens got poor service, and the accounts never balanced at the end of the year. Annual deficits were the rule and these were regularly liquidated by the issue of bonds. The city debt was increased three million dollars during the years 1880-1900 by this practice of borrowing to cover annual shortages. From time to time the heavier taxpayers and the business organizations raised an outcry against the way in which the city's affairs were being conducted; but the spoilsmen were well entrenched and the protests availed nothing. The situation had reached the point where many citizens of Galveston resigned themselves to the conclusion that municipal misgovernment was an affliction which must be borne because it could not be cured.

Galveston in 1900.

The Partial Destruction of the City.

Then came a great emergency. On September 8, 1900, a hurricane drove up from the Gulf of Mexico and carried a tidal wave over the city. Bridges were swept away, streets were torn up; great strips of wood-block pavements floated off to sea like liferafts. The water supply and sewer systems were put out of commission and badly damaged; the lighting plant was wrecked;

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[1] One need only mention the initiative, referendum and recall, direct primaries, popular election of senators, woman suffrage, prohibition, and so forth, to indicate that the years 1900-1920 were marked by great innovations.

schoolhouses and fire stations were demolished by the violence of the tidal impact. When the waters receded the city was a welter of wreckage and sand. More than one-third of all its shops and dwellings had been destroyed. About six thousand persons, more than fifteen per cent of the population, lost their lives.

Failure of the Existing Government to Cope With the Emergency.

Here was a desperate situation to be faced. It was imperative that the streets and public buildings should be at once rebuilt, the water, sewerage and lighting plants restored, and adequate measures taken (such as the building of a sea-wall) to prevent a recurrence of the catastrophe at some future time. The existing city government, as anyone might have foreseen, proved itself wholly unable to cope with so serious an emergency; its utter helplessness was revealed, as a flash of lightning illumines the earth on a dark night. While the city lay prostrate its elective officers fell to wrangling among themselves over the awarding of contracts for clearing away the ruins. Meanwhile an exodus of the surviving population began; people sold their properties at a sacrifice and crowded the outgoing trains. The treasury was empty and the city defaulted the interest on some of its bonds. Under such conditions it was apparent that no new funds could be obtained from banks or investors for reconstruction or any other purpose. The city was to all intents bankrupt; what it needed was a receivership.

The State Legislature Comes to the Rescue.

It was at this point that some of the city's leading business men stepped in. Ignored by the politicians in the years preceding the disaster they were now called upon to save the situation. Fortunately there existed among the merchants, manufacturers, bankers, and shippers an organization which had been formed to secure the improvement of the harbor, and this body was prevailed upon to step into the breach. Through a committee it promptly drafted a tentative scheme of administration which contemplated the entire abolition of the old municipal system and the substitution of a simple, unified, plan of government by a state commission. This plan, in the form of a special statute, was presented to the Texas legislature and in April, 1901, it was enacted.[1] At one stroke the measure abolished

Commission Government Established.

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[1] In a statement accompanying the measure its sponsors cogently set forth their attitude towards the whole question as follows: "We believe that municipal government, as it has been administered in this community for

the old municipal organization, lock, stock and barrel. In place of the mayor, aldermen and boards it set up a commission of five citizens with pretorian powers.[1] The commission was authorized to pass ordinances, to make appropriations, to levy taxes, to administer the various departments, to grant franchises, to award contracts,—in a word to exercise all the powers of the municipal corporation. A noteworthy feature of the Galveston plan was the provision that the commission should apportion the various functions of administration among its own members, each becoming the head of a department.[2] Legislative and administrative functions were thus combined in the same hands, the old doctrine of checks and balances being relegated to the discard.

Regarded as an Emergency Measure the Plan Became Permanent.

It should be made clear that this plan was not intended to provide a permanent scheme of city government for Galveston, much less a model for adoption by other cities. It was an emergency arrangement, devised to meet a situation where the question of "civic life or death" was involved. The Texas legislature consented to it reluctantly, with the understanding that after normal conditions had been fully restored the old

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the past twenty years, is a failure. It did not require the storm to bring a realization of this fact, but it brought it home with greater force upon us. We are seeking relief from the municipal destruction and despair staring us in the face. It is a question with us of civic life or death. . . . We are asking for a charter placing the entire control of the local government in the hands of five commissioners, designed to benefit the people rather than to provide sinecures for politicians."

[1] As originally passed by the legislature in 1901 the statute provided that three of the commissioners should be appointed by the governor of Texas and two elected by the voters of Galveston. But after the commission had been constituted in this way, and had begun its work, the constitutionality of the statute was attacked in the courts. The Supreme Criminal Court of Texas, in March, 1900, held that the legislature had no power, under the Texas Constitution, to authorize the appointment of municipal officers, with powers to exercise police jurisdiction, by the governor of the state (*Ex parte* Lewis, 45 *Texas Criminal Reports*, 1.). Thereupon the legislature amended the Galveston charter making all the commissioners elective and the voters of the city forthwith elected the three commissioners who had been in office by virtue of the governor's appointment. In its final form, therefore, the Galveston plan provided for the election of five commissioners by the voters of the whole city.

[2] Four departments were created, namely, finance and revenue, water and sewerage, police and fire protection, and streets and public works. One of the commissioners was placed at the head of each, the fifth commissioner was named mayor-president and took no department, but was charged with a general supervision over the entire field of administration.

form of government would be re-established. But that was not what happened. The success of the Galveston commission was so apparent that no one could fail to be impressed. With remarkable speed the commission planned and procured the building of a great breakwater; as a further precaution it raised the ground level of the entire city. It repaved the streets, reconstructed the public buildings, and put the municipal utilities into service again. All this necessitated the floating of large loans; but by drastic economies in the current expenses of the city the commission was able to keep the tax rate down. Sinecure offices were abolished; various channels of leakage and waste were closed; the city's business methods were improved, and the whole administration toned up. Within five years Galveston was a much better community than it had been before the storm. So conspicuous was the improvement that all thought of restoring the old municipal system disappeared.

Spread of the Plan to Other Cities.

Meanwhile the "Galveston plan" attracted attention in other communities. Newspapers and magazines interested themselves in this miracle of municipal administration. Many of them sent special correspondents and "write-up men" to get what seemed to be a good story, and Galveston presently became the most widely-advertised city in the United States. Municipal reformers throughout the country took up the cue, for here was an opportunity to talk facts, not theories. What had been done in Galveston, they proclaimed, could be done elsewhere. Influential protagonists of civic improvement became champions of the plan, using both pen and voice very effectively on its behalf.[1] Within a few years the plan had spread to the other cities of Texas and in 1907 it made its way northward to Des Moines.[2] From this new center it moved both east and west, overturning the old municipal system with the speed of a revolution.

Extent of This Spread.

The spread of the commission plan during the years 1907-1914 was extraordinarily rapid. Politicians who had grown accustomed to the traditional apathy of the people in matters affecting city government were frankly bewildered. They protested, as usual, that the commission plan was un-democratic, socialistic, un-American, a return to the ancient Greek form of government by a group of tyrants. But public opinion did not pay much heed to these jeremiads; the voters in one city after another adopted the new plan when they got the opportunity.[1] Mayors, councils, and boards were bowled over like the Hindenburg line. In 1910 more than a hundred cities of all sizes had established the commission form of government; two years later the number had doubled; in 1914 the total had passed four hundred. Then the movement began to lose momentum and during the last nine years it has not made much farther advance. On the contrary it has lost some ground since 1919 and bids fair to lose more as time goes on.

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[1] President Charles W. Eliot of Harvard University, for example. More than any other man he aided in bringing the achievements and possibilities of the plan to the favorable attention of the public in the cities of New England.

[2] The Des Moines plan differed somewhat from that established in Galveston and was generally regarded as an improvement over the latter. It provided for the nomination of the commissioners by a non-partisan primary, for civil service reform, and for the initiative, referendum and recall.

Regions in Which the Plan Has Proved Most Popular.

It may be interesting to note the sections of the country in which the commission plan of city government made its greatest progress. Although originating in Texas it did not gain many converts among the cities of the southern states, taking them as a whole. Its chief strength developed in the Middle West, in New England, and on the Pacific slope. In the Middle Atlantic states, with the exception of New Jersey, it did not spread widely. The same is true of the South Atlantic region, with the exception of South Carolina. In the Southwest, particularly in Kansas, the commission plan gained some foothold, as it also did in the Northwest; but in neither of these regions was there any headlong displacement of the old charters. This unevenness in the degree of welcome accorded to the new plan in different parts of the country is hard to explain. Why should it have made its conquests so easily in some regions and found the old municipal system so hard to dislodge in others? It is difficult to say. No single explanation suffices to account for it; there were various currents and cross-currents at work.

Most of the Converts Have Been Small Cities.

It is significant, moreover, that the commission plan made its greatest headway in the smaller and medium-sized communities. There are in the United States twelve cities having populations above half a million; in only one of these (Buffalo) has the commission plan been given a trial. There are twenty-one cities with populations between 200,000 and 500,000; only five of them (New Orleans, St. Paul, Jersey City, Newark, and Portland, Oregon) have this form of government. Out of about five hundred cities which have adopted the new plan, first and last, only about thirty are places with more than 100,000 population and about one hundred are places of more than 30,000. The great majority of the commission-governed communities are small cities of ten thousand or less. Hence it may fairly be said that the plan has made its chief appeal to municipalities which are towns in fact although cities in name—places where the municipal problems are not highly complicated, and where administrative work lends itself to effective management by a single, small board.

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[1] Many of the states enacted general laws permitting any city to adopt the commission form. Today there are only four states (New Hampshire, Vermont, Rhode Island and Delaware) in which the establishment of commission government is not authorized by general law.

Present Status of the Commission Movement.

During the past ten years there have been several backsliders. Denver returned to the old form of government in 1916 and its example has been followed by several smaller cities; but Buffalo and St. Paul in 1921 defeated proposals to abolish the commission plan.[1] In general there has been no widespread tendency to restore the old mayor and council system; on the contrary, the inclination among the smaller cities is to move forward to the commission-manager or city-manager plans of government, thus taking what many of them believe to be a logical next step toward a more efficient plan of municipal organization.

Essential Features of the Commission Plan.

While the commission plan is not uniform in all the cities working under it, the variations are of relatively small consequence. The essential feature of the plan is a commission of five members elected by the people.[2] The commissioners are elected at large for a term of two or four years and are usually paid for their services.[3] One of the five commissioners serves as chairman of the commission and is customarily given the title of chairman or mayor.[1] According to the original commission plan, as established in Galveston, the chairman or mayor was given no veto power and no authority to make appointments; his duties were to preside at meetings of the commission and to keep an eye on the general course of the administration, nothing more. This arrangement has not been strictly followed by other cities, some of which give the mayor additional powers.[2] In any event each commissioner (usually including the mayor) takes charge of a group of administrative functions. As there are only five commissioners, there can be only five departments or groups of departments, no matter how numerous and varied the city's administrative activities may be.[3]

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[1] In Buffalo the attempt was negatived by a municipal veto of a legislature act to abolish the commission plan (*Cf. above*, p. 180). In St. Paul the proposal was defeated at the polls.

[2] Occasionally the membership is fixed at three or seven; but five is the usual number.

[3] The salary varies with the size of the city. In New Orleans the mayor receives $10,000 and the other commissioners $6000 each; in Buffalo the figures are $8000 and $7000; in Galveston $2000 and $1800.

Has It Been a Success?

It is now more than twenty years since the commission plan originated in Galveston and more than fifteen years since it made its way into various other communities. This interval has been sufficient to afford the system a fair trial under varied conditions and to permit a tentative appraisal of results. Those who have observed the workings of the plan at close range will not deny that it has some distinct merits and some serious defects, which is a roundabout way of saying that it is like most other governmental devices. There is this to be said of the commission plan, however: its advantages lie on the surface where they can readily be appreciated by the average voter, while the defects are of the sort that do not become apparent at first glance. It is an instrument of government which does not appear to improve with use.

Merits of the Plan:

What are these advantages and defects? The most obvious merit of the commission plan is its simplicity. It eliminates the diffusion of powers and responsibilities which the mayor-and-council type of city government has often carried to an absurd extreme. There is but one governing authority,—the commission;

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[1] It was originally intended that the commissioners, after their election, should choose one of their own members as chairman or mayor. The more common practice now is to have the people choose the mayor directly.

[2] In some cases the mayor has been given the veto power, as in St. Paul, or the power to appoint the city officials, as in Houston, Texas.

[3] The usual grouping is somewhat as follows: Public Works, Public Health, Public Safety, and two other groups which may be either Accounts and Finance, Public Affairs, Public Property, Public Utilities, or Public Welfare. Various combinations of functions are possible. The apportionment of duties among the commissioners may be done in any one of three ways, namely, by the direct election of commissioners to specific commissionships, by vote of the commission, or by the mayor. The second plan is the one most commonly used.

1. It Has Simplified Responsibility and Concentrated It.

all municipal powers are exercised by it alone.[1] There are no checks and balances in commission government. The value of this simplicity and concentration is self-evident. Public attention can be focussed upon one governing body; there is no shifting of responsibility from one body of officials to another until the people lose sight of it altogether. There is no opportunity to throw up a smoke screen when things go wrong.

2. It Provides a Scheme of Government That Is Intelligible to the Ordinary Citizen.

Being simple, the commission form of government is intelligible. One does not need to plough his way through learned treatises to understand it. Mayor-and-council government, complicated by the existence of numerous administrative boards, is often quite unintelligible to the masses of the people. The average citizen does not know where the authority rests, or how it is shared by the various officials. He is bewildered by the interplay of mayoral vetoes, aldermanic confirmations, and departmental friction. Government ought to rest on the consent of the governed; but people cannot give a willing consent to that which they do not understand. Government ought to be responsible to the people, but no government can be responsible unless it is intelligible. Napoleon Bonaparte once said that a constitution should be "obscure," thus permitting the authorities to evade its provisions when necessity arose. The professional politicians have the same attitude toward city charters and systems of municipal organization. The more obscure the provisions of the charter and the more complicated the structure of the government the easier it is for rings and bosses to pursue their traditional policy. The old form of city government was enshrouded in fog. The commission plan let in the light.

3. It is Based on the Principle That City Government is Business.

The mayor-and-council plan is based upon the doctrine that the city's business is government, while the commission plan proceeds on the principle that the city's government is business. The aim of one is to protect the people against the concentration and abuse of power; the prime purpose of the other is to lodge authority where it can be promptly and decisively exercised. And if "city government is business, the right way to conduct it is by electing a board of directors"—so runs the argument. Stated in that form the argument has a plausibility which appeals to men and women who do not think deeply or straight, and it proved very effective in campaigns for the adoption of the commission plan.

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[1] An exception is usually made in the case of the schools which remain in the hands of a separate board.

But is it, after all, a sound argument? The government of a city is not in a strict sense business.[1] It is a combination of government, business, and philanthropy. And in any case the commission plan does not conform to the principles of business management. Every well-organized business has a single directing head; it is not managed by five administrative officers each with equal powers. The members of a board of directors do not divide the administrative duties among themselves; they delegate such duties to a president, a manager, or a superintendent. The commission plan makes no provision for single-headed, unified, direction of the city's affairs. On the other hand, it can fairly be said that the commission plan, by placing a single body in complete and undivided control of all the city departments, has both encouraged and facilitated the use of better business methods in city administration than were practicable under the plan which it displaced.

4. It Has Promoted Harmony, Promptness, and Publicity in the Municipal Service.

The commission form of government has set new standards of harmony, promptness and publicity in the handling of the city's affairs. A very sagacious man once said that "in a multitude of counsellors there is wisdom"; but it was not city councillors that he had in mind when he gave this proverb to the world. A multitude of councillors and other officials, each sharing in the determination of municipal policy, is a far better guarantee of bickerings and inaction than of collective wisdom. Five men can work in harmony where fifty cannot. The more numerous the members of a governing body the greater is the temptation to the use of obstructive tactics and the greater, also, is the likelihood that matters will be settled in secret conclave by a few. Under the commission form of government it is not insuperably difficult to secure the harmonious, expeditious, and public transaction of business. No form of government, of course, offers an absolute guarantee that public affairs will be conducted in this way, and the experience of the past twenty years has proved that even small bodies of city commissioners can form cliques, play politics, sacrifice the public interest to personal ends, and do business behind closed doors. But it will hardly be denied that such things are less common under the commission plan than where the authority is apportioned among mayors, boards, and councils.

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[1] See Vol. II, Chap. XXIII.

5. It Has Tended to Improve the Quality of Elective Office-Holders, But Not to the Extent That Was Predicted.

When the commission movement was spreading like wildfire through the country, ten years or more ago, its more enthusiastic advocates predicted that the new system would enable the cities to draw better men into the municipal service. The mayor-and-council form of government, they said, provided too many elective offices and by so doing placed a premium on mediocrity. No city can elect forty or fifty officials at a single election without finding some culls in the lot. It is a commonplace of practical politics that voters will not exercise much discrimination when a long list of candidates is set before them at the primaries or the polls. But with the number of elective offices reduced to five, it was said, the situation would be different. The five commissionerships would appeal to the best men of the community, to men who had made a success of their own affairs. It was predicted that "men who had retired from business" would be willing to give their services to the city under the commission plan, whereas the important offices had been filled, under mayor-and-council government, by men from whom business had retired. But this prophecy, like many others in the literature of reform, has not been very amply fulfilled. The caliber of municipal officeholders is not a thing that lends itself readily to any form of statistical computation, but there is plenty of evidence to prove that the adoption of commission government has not brought a wholly new type into the municipal service.[1] Nor is this surprising. Elective offices under any plan of municipal government are likely to go to men who have a wide acquaintance among the voters and who are willing to exert themselves politically. Popularity and persistence will help a man to win election at the polls, whether he be one candidate among five or one among fifty. It is probably true, nevertheless, that the general average of personal qualifications among candidates has been raised by reducing the number of offices to be filled and in any event it is beyond all reasonable doubt that the commission plan affords even mediocre officeholders a better opportunity to achieve results. It is the testimony of men who have held office under both systems that the commission plan, with its concentration of power and responsibility, affords better incentives to good work and more favorable opportunities for doing it.

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[1] A study of the personnel in ten cities, some years ago, showed that of 50 commissioners then in office, no fewer than 36 had held some elective or appointive municipal position under the mayor-and-council form of government which preceded.

The Plan Has Not Altogether Fulfilled Expectations in Lowering Tax Rates.

When municipal reformers set out to convince the people that some new governmental mechanism ought to be adopted it is their usual practice to predict that the change will reduce expenses, lower the tax rate, and give the city a greater return for a smaller outlay. Such promises, in nine cases out of ten, merely create expectations which cannot be fulfilled. It is a reasonably safe prediction to make in any city, at any time, that taxes and expenditures will keep going up no matter what form of government is adopted. This is because the citizens in all progressive communities are insatiable in their demand for more service, and better service, no matter what it may cost. The adoption of the commission plan has not enabled cities to reduce their expenditures and no one should ever have committed the folly of promising that it would do so.

Whether It Gives the Taxpayer More for His Money No One Can Say.

But having discovered that the expenditures keep soaring in spite of the change, the supporters of the new plan nowadays content themselves with the assurance that although commission government does not mean a lower tax rate it gives the taxpayer more for his money. That may or may not be true. There is no way of comparing what two communities obtain for their respective outlays, for in no two of them are conditions exactly alike. The quality of a city's administration is largely a matter of opinion. When you point out that one city is paying more money per capita for its police or fire or health protection than these things cost in some other city of the same size you are invariably met with the explanation that the problem is more difficult or that the service is correspondingly better. Every American city claims to be the best governed city in the world—makes this claim, in fact, for every one of its departments. To admit that some other municipality is getting better service for less money is the last thing that any city official would ever think of doing. The claim, therefore, that the commission form of government has enabled cities to get more for their taxes is one which can neither be proved or disproved. It may be true; more likely it is not.[1]

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[1] In 1916 the United States Bureau of the Census made a study of tax

Many of the Objections Raised Against the Commission Plan Have Been Shown to be Groundless.

But if the commission plan has hardly measured up to what its more ardent sponsors anticipated, it is equally true that the pessimistic forecasts of those who opposed the innovation have proved to be without foundation. It was said that the plan would enable small cliques of politicians to get control of the city funds. Three commissioners, in collusion with each other and in league with the bosses, could plunder the city like a Tweed Ring—there would be no checks and balances to hinder them. But the fact is that nothing of the sort has happened anywhere under commission government. On the contrary there has been less ring-rule in commission-governed cities than in other communities. Dividing power into many hands, as was done in the old days, does not afford a safeguard against collusion and crookedness. It is easier, as a matter of practical politics, for a few bosses to manipulate a large council than a small one. The people can watch three commissioners more easily than thirty councilmen. Security against corruption and malfeasance can best be provided by choosing a small number of officials, holding them to a strict accountability, and compelling them to do their work in the public eye. As for the objection that the commission plan is undemocratic, un-American, and contrary to "sound principles of government"—all this may be dismissed as soap-box rhetoric. These epithets have been applied at one time or another to the Australian ballot, the merit system, the non-partisan primary, the initiative and referendum, woman suffrage, prohibition, and a dozen other reforms. Anything that a politician does not like is undemocratic and un-American.[1]

Nevertheless the Plan Has Some Real Defects.

There are, however, some substantial objections to the commission form of government which the experience of the past two decades has made plain. First and most important among these is its failure to effect a real concentration of administrative responsibility. The commission is a five-headed municipal

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rates, expenditures and debts in a selected group of cities, some having commission government and some the older form. The results were inconclusive. In the commission-governed cities the expenditures were relatively smaller; but the per capita indebtedness was greater. Bureau of the Census, *Comparative Financial Statistics of Cities Under Council and Commission Government* (1916), p. 9.

[1] I have even heard the New England town meeting called an "undemocratic and un-American" institution, although one would think that a plan of local government which has existed in the United States for three hundred years would have become tolerably well Americanized by this time.

executive, a pyramid without a peak. It has the weakness which characterizes all types of board-government in that it easily becomes a house divided against itself. The five commissioners often fail to agree, and the temptation is for three of them to combine against the remaining two.[1] This is what has happened in many cities. It is also an essential weakness of the commission plan that although each commissioner is given charge of a department his colleagues can overrule him on any point. And when they interfere, the commissioner in immediate charge of a department is free to declaim responsibility, whereupon we have the old confusion re-installed. This is an organic defect, not a merely incidental one. It is a weakness inherent in the plan itself; it does not arise from the jealousy and sensitiveness of the officials whom the people elect. The various city departments cannot be treated as separate entities and managed independently without reference to one another. There must be some co-ordinating supervision. When a commission of five men undertakes to dictate how each of its own members shall manage his own department all harmony goes a-glimmering. You cannot combine unified control with departmental independence. The commission plan is fundamentally unsound in that it makes no provision for a strong mayor, a city manager, or any other individual apex of control and responsibility. Doubtless it is better to distribute administrative power among five men than among fifty-five; but to concentrate it in the hands of one man, holding him duly responsible for its exercise, is better still. Plural executives rarely give satisfaction; they have shown their weakness in county administration throughout the United States, and in the New England towns they are breaking down whenever the community grows large enough to create difficult administrative problems.

1. It Does Not Provide a Unified Executive.

So a commission of five members is too large to assure the unified and harmonious direction of city administration. On the other hand it is too small to serve satisfactorily as a legislative body in any large community. The body which enacts the ordinances, determines the tax rate, votes the appropriations, authorizes loans, and decides other questions of general policy

2. It is Inadequately Representative.

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[1] See the article on "The Weakness of the Commission Plan," by C. M. Fassett, in *National Municipal Review*, Vol. IX, pp. 642-647 (October, 1920).

should be large enough to reflect in its membership the more fundamental variations of opinion among the people. This does not mean, of course, that it should be large enough to represent every shade of opinion, political, racial, religious, social, and geographical. A council or commission chosen on that basis would be too big and unwieldy. How large a city council or a commission ought to be in order to serve as a trustworthy mirror of public opinion depends upon the size and character of the community. In cities of 20,000 population or less a body of five members ought to be sufficient, and it is among such municipalities that the commission plan has had its greatest vogue. But in large communities it is difficult to see how any adequate representation of substantial interests can be accorded in a body of only five members. The suggestion will be made, of course, that five men can reflect public opinion just as well as fifty if they try to do it, and that is undoubtedly true. But the voters will never be convinced that they are actually represented in a body which rarely or never contains anybody from their own neighborhood or of their own class. When nobody from the east side, or from the north end, is to be found among those who direct the course of municipal policy it is idle to argue with the east-siders or the north-enders that this is a matter of no consequence, because their interests are being conscientiously looked after by broad-visioned men who live in other parts of the city. You may be stating the truth, but they will not believe you. The notion that representation is a matter of party, class, and neighborhood has a deep anchorage in the American group-mind.

3. It Has Failed to Make Sufficient Use of Experts.

Another practical objection to the commission plan is that it discourages the placing of capable and experienced officials at the head of the various city departments. Each commissioner, as has been said, becomes an administrator. It was contemplated in the original commission plan that the commissioners themselves would have no special qualifications for administrative work and that they would devolve the bulk of it upon experts. In other words it was expected that each commissioner would occupy a position and exert an influence similar to that of the committee-chairman in English cities.[1] But this expectation has not been realized. In the general haziness as to what duties a commissioner ought to perform, men have often been chosen because they possessed some pseudo-qualifications for the position in sight.[1] The practice of paying each commissioner a substantial salary has also had an influence in expanding the functions of these officials far beyond what they were originally intended to be. To make a show of earning his salary each commissioner naturally feels that he ought to be the real and not merely the nominal head of his department. Most cities, moreover, cannot afford to pay two salaries for the same work, one salary to an elective commissioner of public health, for example, and another to a qualified public health expert. The members of the commission, accordingly, have been tempted to go beyond their depth, and to handle problems quite beyond the competence of the ordinary layman. No one can be divested of his strictly amateur status by merely calling him Commissioner of Public Works, or by giving him any other euphonious title. Laymen cannot be transformed into experts by the alchemy of a ballot-given designation. Jersey City, some years ago, chose an undertaker as its commissioner of health; in Topeka the commissioner of public utilities was a barber by trade; in Houston, Texas, a machinist became commissioner of finance.[2] There is no reason, of course, why the pursuit of any honest occupation should debar a man from service as a *representative,* but the capable management of a municipal department demands something more than honesty and good intentions.

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[1] See *above*, p. 358.

4. It Has Not Always Been Accompanied by Internal Reforms.

To ensure the permanent bettering of municipal administration it is essential not only that the frame of government be simplified, and responsibility centralized, but that accounting and financial methods be improved, the merit system extended, opportunities for corruption and wastage eliminated, publicity introduced into all the departments, business methods adopted, and measures taken for arousing the interest of the people in municipal issues. These far-reaching reforms, it stands to reason, cannot be brought about by merely changing the type of government. The framers of commission charters have been inclined to overlook the elementary fact that success or failure in obtaining full value for public expenditures does not depend wholly, or even largely, upon the form of organization. In large measure it is related to the way in which city officials are required to do their work. In every branch of the city's business, whether it be the keeping of accounts, the framing of budgets, the letting of contracts, or the borrowing of money, there are right ways and wrong ways of doing things. Left to themselves the officials will usually choose one of the wrong ways, not from sheer perverseness, but because they do not know any better. Put an amateur in charge of any technical enterprise, from paving a street to dealing with a criminal, and if he hits upon the right way it will be by miracle. The wise architect, when he plans a building, leaves nothing to imagination or surmise on the part of those who are to do the work. On the contrary he prepares plans and specifications covering even the minutest details, and he expects these to be scrupulously followed. Those who plan systems of municipal government cannot be so precise, but they have been remiss in leaving so many essential things as hostages to fortune.

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[1] This has been particularly the case in cities where the commissioners are elected directly to the headships of designated departments. Under the original commission plan all the commissioners were elected on an equal footing; then, after election, they divided the departments among themselves. But some cities did not like this arrangement so they provided that the designation of each commissioner to a specified department should be made by the people at the polls.

[2] For some further examples see Raymond B. Fosdick, *American Police Systems* (New York, 1920), p. 176.

The Future of the Commission Plan.

In view of the organic and incidental shortcomings which the commission plan has disclosed in actual operation it is quite unlikely that American cities, especially the larger ones, will find emancipation from their difficulties by adopting it. Many small communities will doubtless retain it, and continue to find it satisfactory; but such places can get along with any form of government provided it is simple. Among cities of 100,000 population or more it is not probable that the commission form of government will make new converts. It is weak at the very point where a plan of government must be strong in order to facilitate the solution of those complicated problems which confront the great urban communities of today. Let it not be concluded from all this, however, that the commission movement has failed to render a great service to the cause of municipal reform in the United States. It embodied a protest against an old order, and as such it was exceedingly effective. It compelled American cities, both big and little, to clean house. By its phenomenal spread it carried an impressive lesson. It showed the politicians that the people, when driven to it, will not scruple to wipe the slate clean and begin anew, and that they will not be deterred from such drastic action by the halo of tradition which surrounds institutions of long-standing. The commission movement worked a complete revolution in the governments of several hundred American communities, and a partial revolution in the governments of quite as many more. It set things going in the right direction, and they are still headed that way.

REFERENCES

Books and pamphlets relating to commission government, issued prior to 1915 are listed in the author's *Bibliography of Municipal Government* (Cambridge, 1915).

The Library of Congress, Division of Bibliography, issued in 1920 a thirteen-page *List of References on Commission Government for Cities.* Later references may be found in the *Annual Bulletin* of the Public Affairs Information Service, and the *Annual Cumulation* of the Readers' Guide to Periodical Literature, both published by the H. W. Wilson Co., New York.

The most comprehensive treatise on the subject is T. S. Chang's *History and Analysis of the Commission and City Manager Plans of Municipal Government* (Iowa City, 1918). Attention may also be called, however, to the survey of the subject in *Bulletin No. 12* of the Massachusetts Constitutional Convention (Boston, 1918), and in W. P. Capes, *The Modern City and Its Government* (New York, 1922), pp. 126-149, likewise to the chapters on the topic in A. M. Kales, *Unpopular Government in the United States* (Chicago, 1914), pp. 139-180. A brief but vigorous criticism of the commission plan may be found in Raymond B. Fosdick, *American Police Systems* (New York, 1920), pp. 174-186.

A study of the actual workings of the commission plan is included in Henry Bruère's *New City Government* (2d edition, New York, 1913). In 1916 the U. S. Bureau of the Census issued a special report containing *Financial Statistics of Cities Under Council and Commission Government.*

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The rules of law relating to the adoption of commission charters are given in W. K. Clute, *The Law of Modern Municipal Charters* (2 vols., Detroit, 1920), also in Vol. VII of the Supplement to Eugene McQuillin's *Treatise on the Law of Municipal Corporations,* pp. 6440-6480.

CHAPTER XXI

THE CITY MANAGER PLAN

The Two Most Conspicuous Defects of the Commission Plan.

The two fundamental defects of commission government, as indicated in the preceding chapter, are, first, its failure to make provision for a unified central control over the entire administrative work of the city, and, second, its practice of putting the various city departments under the supervision of men who have no technical qualifications, but who nevertheless try to do the work of experts. Almost from the very outset these weaknesses began to show themselves.[1] It was soon discovered that harmonious and efficient municipal administration is not merely a matter of electing fewer men, giving them high-sounding titles, and having them sit in public session at a round table. Personal rivalries within the commission's membership, with each commissioner striving to gain the largest share of public applause, often prevented the development of any constructive leadership. City government, after all, does not consist merely in settling questions which have attracted great popular interest; the larger part of it has to do with matters of humble routine in which the public does not seem to be interested at all.

How the City Manager Plan Aims to Overcome Them.

With a conviction that some way of remedying the fundamental defects of the commission plan must be found, municipal reformers turned once more to the analogy of corporate business. And they soon satisfied themselves that much of the trouble came from the fact that commission government claimed to be what it was not. It claimed to be a "business" government, with a "board of directors," chosen by the "stockholders of the city." But boards of directors in business concerns do not assume the actual functions of administration either collectively or as individuals. They employ a general manager to do this. Having assured themselves that this manager is the right man for the job, they give him all reasonable latitude to select his subordinates, to co-ordinate their work, and to manage the business as he deems best. They merely look to him for results, and so long as the results are satisfactory neither the board nor any of its members interferes with his methods of getting them. If, therefore, it is desired to equip the city with a business government, why not follow the business analogy to its logical conclusion by providing that the commission, instead of trying to perform the work of administrative supervision through its own members, shall employ a general manager for this purpose? That is the angle from which leaders of reform in some American cities approached the problem about a dozen years ago and developed the city manager plan.[1]

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[1] See the author's article on "Ten Years of Commission Government" in *National Municipal Review*, Vol. I, pp. 562-568 (October, 1912).

The Dayton Experiment.

The first important city to carry the managerial idea into effect was Dayton.[2] It is sometimes said that Dayton, like Galveston, was driven into the orbit of reform by the occurrence of a catastrophe; but this is hardly an accurate statement. It is true, of course, that the city-manager plan of government was adopted in Dayton immediately after the inundation of the city by a flood which caused a great destruction of life and property, thus creating an emergency which the existing municipal authorities found themselves wholly unable to handle.[3] The mayor and council proved themselves so bewildered and incompetent that the governor of Ohio declared martial law within the city. Not only this but he commissioned Dayton's most prominent business man a colonel in the national guard and set him to do what the mayor and council had failed to do.[1] But the movement for the reorganization of Dayton's municipal system had been started some months before the inundation and was already well under way when the emergency came. The disaster merely gave it new momentum. At any rate a charter commission of fifteen members was at once elected in accordance with the home rule provisions of the Ohio constitution (which had been adopted in the preceding year), and this charter board set to work without delay. One of its first decisions was to frame a charter providing for the commission form of government with the addition of a city manager. The conscious aim was to secure the merits of the commission plan while keeping clear of its defects.[2] By dint of hard and steady work on the part of the charter board, the details were worked out in a remarkably short space of time; the charter was then submitted to the people of Dayton and adopted by a large majority, the vote in its favor being more than two to one.[3]

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[1] The spread of the commission plan and the dislodgment of the professional politicians from their posts of vantage had aroused among the business men of the cities a new interest in municipal government. Chambers of commerce, boards of trade, and other business organizations had become active in the movement for new city charters. Such bodies took very kindly to governmental theories enunciated in business terms. It is true that in some business concerns the board of directors is made up of the heads of the various departments (buying, producing, selling, financial, etc.) but such instances are not common.

[2] Some smaller communities preceded Dayton in this respect. The first was Staunton, Va., which in 1908 provided by ordinance for the appointment of a general manager. New Mexico in 1909 adopted a statute permitting municipalities to employ a "superintendent of city affairs" and one city (Roswell) took advantage of this opportunity. In 1911 the city of Lockport, N. Y., presented to the New York legislature a measure which would have permitted the appointment of a city manager but it failed to pass. Sumter, S. C., secured in 1913 a charter which provided for the appointment of a city manager. But all the cities concerned in this movement, prior to 1913, were small communities and their action made no impression upon the country as a whole.

[3] The flood, which was caused by the overflowing of the Miami River during a spring freshet, occurred in March, 1913.

Essential Features of the Dayton Plan.

The essential features of the Dayton plan may be briefly summarized. All municipal authority is vested in a commission or small council of five members elected at large on a non-partisan ballot for four-year terms.[4] An election is held every two years, and at each election two or three members, as the case may be, are chosen. Nominations are made at a non-partisan primary; the name of any voter may be placed upon the primary ballot by a petition bearing the signatures of at least two per cent of the registered electorate.[1] The candidate who polls the highest vote at the election when three commissioners are chosen takes the title of mayor and presides at all meetings of the commission; but he has the same voting power as the other members. He has no veto over the acts of the commission and no special administrative functions.[2] Although chosen for a four-year term, each member of the commission (including the mayor) is subject to recall by the voters at any time after he has served six months. The petition for a recall must be signed by at least twenty-five per cent of the registered electorate, a requirement which makes the procedure rather difficult.[3]

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[1] The citizen in question was the late John H. Patterson, head of the National Cash Register Company, which is Dayton's largest industrial concern. When a city is put under martial law the officer in command is supreme over the existing municipal authorities.

[2] This is shown by a statement which the charter board issued to the voters in explanation of the new charter. "We have taken a step in advance of the commissioned-governed cities and provided a remedy for the generally acknowledged defect of such forms. We have provided a chief administrative officer named the city manager whose duty it shall be to supervise and control the conduct and operations of all officers and employees of the city and to manage the affairs of the city in an efficient and economical manner. We are convinced that this centralized action of administrative authority will produce business-like methods in city government and fix responsibility for official action."

[3] The personnel of the commission was of high quality. Mr. Patterson was its chairman. The other members were representatives of the various business, professional, labor, and civic interests. The rapidity with which the whole thing was done is significant. The flood came in March, 1913, the charter commission was elected in May; the charter was ready in June; it was adopted by the voters in August, and went into force on January 1, 1914.

[4] The authority of the commission does not extend, however, to the administration of the schools or the public library which are left as they were, in the hands of an elective school board.

The Commission: Its Functions.

The commision is the city's legislative organ.[4] By majority vote of its five members it enacts the ordinances, makes the annual appropriations, and determines all general questions of municipal policy. Ordinances passed by the commission must be withheld from going into force and submitted to the voters for acceptance or rejection whenever fifteen per cent of the latter so request. Ordinances may also be initiated and submitted to the people by twenty-five per cent of the registered voters. The commission appoints no officers except the city clerk and the three members of the civil service board. Nor does it have any immediate control of departmental administration. Individual members of the commission are not placed in charge of departments as in commissioned-governed municipalities. On the contrary the commission is expressly required by the provisions of the charter to choose a city manager and to vest in him the actual work of supervising the administrative departments.[5]

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[1] At the time the charter was adopted this meant about four hundred names.

[2] He is the official head of the city, so recognized by the courts in all suits at law, and represents the municipality whenever on occasions of ceremony such representation is appropriate. In the event of a serious emergency he may assume direct control of the police.

[3] In Dayton today about ten thousand signatures are needed.

[4] The term "council" or "board of directors" is in some cities used instead of "commission" as the title of this body.

[5] One provision in the Dayton charter is as follows: "A director for each department shall be appointed by the city manager and shall serve until

The City Manager: His Position and Qualifications.

The city manager is chosen by a majority vote of the commission and holds office for no fixed term. He may be removed at any time. It is provided in the Dayton charter, and the example has been followed by other cities, that the city manager "shall be appointed without regard to his political beliefs" and that he "may or may not be a resident of the city." It is usually stipulated, likewise, that "he shall be chosen solely on the basis of his executive and administrative qualifications," but there is no way of enforcing this provision. Opinions as to what constitute "administrative qualifications" often differ widely; and there is nothing in any city-manager charter to keep the commission from appointing, if it so desires, some local man whose qualifications are political only. This does not mean, however, that the provision as to definite administrative qualifications is either futile or superfluous. It gives the right sort of commission a valid defence against political pressure when the members make up their minds to observe the spirit of the provision. The office of city manager carries a substantial salary everywhere; it is the most highly-paid position in the municipal service.[1]

His Functions.

The usual powers of the city manager may be grouped under four heads. *First,* he is the commission's advisory expert on all questions of municipal policy. He attends its meetings, takes part in the discussions (but does not vote), and provides the commissioners with such data as they may need for reaching decisions. He is the connecting link between the legislative and administrative departments of the city government. In this advisory capacity a city manager who knows his business and possesses the right personality can exert a great deal of influence. *Second,* the city manager is the commission's agent for enforcing the ordinances and carrying its votes into effect. In this respect

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removed by the city manager or until his successor is appointed and has qualified. He shall conduct the affairs of his department in accordance with the rules and regulations made by the city manager and shall be responsible for the conduct of the officers and employees of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department." Section 53.

[1] The salaries of the city managers in some of the larger cities are as follows: Akron and Dayton, Ohio, $10,000 and $7500; Grand Rapids, Mich., $6000; Wichita, Kan., $6000; Norfolk, $12,000; Portsmouth, Va., $10,000; and San Diego, Calif., $5400.

he inherits a function which belongs to the mayor in mayor-and-council cities. *Third,* he has the right to appoint and remove all municipal officials, subject, of course, to the civil service regulations. These regulations usually give the city manager a free hand in selecting the heads or directors of departments, but require that appointees to all subordinate positions shall be taken from lists supplied by the civil service board. Subject to the same restrictions he has the right to suspend or to remove appointive officials. *Fourth,* the city manager takes entire responsibility for the conduct of the various municipal departments, streets, police, fire protection, and the rest.[1] It is his duty to instruct the directors or heads of these departments, to secure a proper interlacing of their functions, to investigate complaints concerning their work, and to compose any differences which may arise among them. In a word he controls the various activities like the general manager of any business concern.

The Internal Administrative Organization.

In order to facilitate this work of direction and supervision it is usually provided in city-manager charters that all administrative activities shall be grouped into a designated number of departments. The number in most cases is five, this being a survival of the commission plan out of which the city-manager type of government has grown. City-manager charters sometimes go further, as in Dayton, and prescribe what bureaus or divisions shall be established within each department, thus giving an unnecessary rigidness to the whole administrative organization. As a rule, however, the arrangement of departments and bureaus is not fixed by charter provision but is left to be dealt with by ordinance. This is the better plan. In any event each department has a head appointed by the city manager, and each is divided into two or more divisions, the latter in charge of officials with appropriate designations. Thus the concentration of administrative responsibility is complete; all the lines converge inward and upward. Heads of divisions or bureaus are responsible to the heads of departments; these are in every case responsible to the city manager; he, in turn, is accountable to the representatives of the people.

So much for the essentials of city-manager government. What of the routine procedure, the business methods, and the securities

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[1] The school department is usually excepted, and sometimes poor relief also.

The Business Provisions of City-Manager Charters.

against extravagance or corruption? City-manager charters devote a good deal of attention to these things and rightly so, for they are of great importance. In the model city-manager charter prepared by the National Municipal League nearly half the provisions relate to the methods of routine administration—to such matters as appropriations, budget making, special assessments, borrowing, accounting, audits, contracts, centralized purchasing, franchises, the control of public utilities, annual reports, and so on.[1]

Budget-Making Procedure.

It is impracticable, of course, to give a digest of these various provisions, but a few outstanding features deserve emphasis.[2] It is worth noting that the duty of preparing a preliminary estimate of the year's expenditures is imposed upon the city manager. He obtains figures from the officials whom he has placed in charge of the various municipal departments, puts these together in orderly form and submits the whole list, accompanied by his own estimates of revenue, to the commission for its consideration. The commission considers these figures in detail, with the city manager present. The city manager, indeed, is entitled to be present at all meetings of the commission, "except when his removal is being considered." When his estimates are under discussion he explains the various items, particularly those which represent an increase over the figures for the preceding year. The commission may decrease or increase any item at will. It may strike out any estimate, or insert a wholly new one. When the commission has finished its work of reviewing the budget it votes the list as a whole; thereupon it has nothing further to do with the appropriations. The spending of the money is entirely under the control of the manager.

Relations Between the Commission and the Departments.

Except for purposes of enquiry and investigation, moreover, the members of the commission must deal with all branches of the city administration through the city manager and through him alone. Any violation of this provision is usually made a punishable offence. The commission alone can authorize the borrowing of money; but in many cases an affirmative vote of the people is also necessary before bonds can be issued. City-manager charters also provide, as a rule, that all supplies shall be bought through the central purchasing agency, that contracts shall be let by open competition, that the accounts of all departments shall be kept in a uniform way, that no member of the commission shall have any business dealings with the city, and that all its meetings shall be open to the public.

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[1] *New Municipal Program* (New York, 1919).

[2] For further information see R. T. Crane's *Digest of City Manager Charters* (New York, 1922).

General Purpose of the City-Manager Plan.

The purpose of the city-manager plan, in a word, is to establish a real pivot of administrative authority and to place this under expert control. On the other hand it seeks to avoid the "one-man government" which has been developed in mayor-and-council cities. The city manager has no right to settle any question of general policy at his own discretion, but mayors possess this authority over a wide range. It aims to encourage, although it cannot guarantee, a reasonably secure tenure in office, thus making more practicable the carrying out of projects extending over a term of years. It leaves the lines of responsibility unmistakably clear. It endeavors to establish, as between experts and laymen, the type of relationship which prevails in all well-managed non-public enterprises. The provision that the city manager shall have the right to be present at all meetings of the commission makes for frankness and fair dealing. A manager who is really a master of his job ought to have little difficulty in wielding a large influence in the commission's deliberations. Knowledge is power. It is power in public as in private life. The city-manager plan is an improvement upon the commission form of government in that it provides a better basis for co-operation and harmony. It permits the enlargement of the legislative organ from five to seven, nine, or as many members as may be desired, thus opening the way to the broad and diversified representation which the people of large cities desire. Incidentally it creates a new profession, that of the trained municipal administrator. This profession has long existed in Europe, but it is new to America.

Spread of the City-Manager Plan.

The city-manager plan, on its adoption by Dayton in 1913, seemed to strike a popular chord. The phrase itself caught the public imagination; it was self-explanatory. Many cities which had been operating under the commission form of government seized upon the new plan as the next logical step forward. Some of them made the change by charter amendment; others merely provided by ordinance that the commissioners, instead of doing the administrative work themselves, should employ a manager to do it.[1] Many other cities which had looked askance at the commission type of government became converts to the commission-manager plan. At any rate the idea spread widely and rapidly. The movement was in part helped, in part hindered, by the War. During the war-years the cost of city administration mounted at an alarming rate and municipal taxes had to be everywhere increased. This naturally gave rise to restlessness among the taxpayers and to a demand for administrative changes in the interest of economy. Some cities were induced to adopt the city-manager plan in the hope that the new system would help to keep municipal expenses down. On the other hand the movement was to some extent slackened by the natural disinclination of some cities to make radical changes in their frame of government at a time when the energies and thoughts of the voters were so completely absorbed by the national emergency. Nevertheless the city-manager plan kept spreading during the war period and after it. Even yet its momentum continues, and it is not at all certain that the crest has been passed. The number of cities which have adopted the manager plan, or some variation of it, now exceeds three hundred.[2] The great majority of them are small communities, with populations under ten thousand. The list includes only one city of over half a million and only thirteen others having populations above 50,000 in 1920.[3] From 1914 to 1921 Dayton ranked as the largest municipality under city-manager government, but in the latter year the voters of Cleveland (the fifth largest city in the United States) gave the plan new prestige by ratifying at the polls a city-manager charter which becomes operative on January 1, 1924.[1]

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[1] In some such cases the manager does not control all the departments but only a few of them. Occasionally, under the commission-manager arrangement the actual situation is that the commissioners really perform the administrative functions, the manager being little more than a high-class errand boy. What passes for the city-manager plan in some small western communities is not entitled to this designation at all, for it disregards the fundamental principle upon which the plan is based, namely, that the manager should have undivided administrative control and responsibility.

[2] The exact figure cannot be given for two reasons, first, because the list is enlarging week by week, and, second, because it is difficult to decide where to draw the line between commission cities and commission-manager cities. Not every city that employs a city manager is entitled to be listed in the city-manager class. One reason for this is stated in the preceding footnote.

[3] These thirteen are Akron (208,435), Dayton (152,559), Grand Rapids (137,634), Long Beach, Cal. (55,593), Nashville (118,342), Niagara Falls (50,760), Norfolk, Va. (115,777), Roanoke, Va. (50,842), Sacramento (65,908), Springfield, Ohio (60,840), Tampa, Fla. (51,608), Wheeling, W. Va. (56,208), Wichita, Kan. (72,217).

Merits of the Plan as Disclosed in Actual Operation.

It is yet rather early to make an inventory of the results which the city-manager plan has achieved; but some merits and defects have already disclosed themselves with sufficient sharpness to warrant a word of comment. The placing of a manager at the head of the city's administration has unquestionably tended to unify the work of the various departments and to eliminate friction among them. It has paved the way for the introduction for better budget-making methods in the smaller cities, as well as for improved accounting, the centralized purchasing of supplies, and the honest awarding of contracts. Floating debts have been wiped out in many cities and expenditures kept within the appropriations. There has been a noticeable improvement in administrative routine, in the methods of reckoning unit-costs, and in the fixing of regular salary schedules for city employees. For the most part the plan seems to be maintaining its hold on the confidence of the voters, although the complaint is sometimes heard that city-managers give so much attention to matters of "efficiency" that they get out of touch with the everyday sentiment of the people. Thus far it has not met with the usual experience of organic governmental reforms—high hopes at the outset and disillusionment after a few years of actual trial. In cities where the attempt has been made to abolish the city-manager plan and to restore the mayor-and-council form of government, the attempt has in nearly every case failed.[2] Such antagonism as exists is usually directed against the personality or methods of the manager, not against the plan itself.

What It Has Failed to Do.

On the other hand the adoption of the city-manager plan has not enabled cities to lower their tax-rates, or to make any appreciable reduction in annual expenditures, or to cut down their bonded indebtedness. It has accomplished some of these things in individual cities, but not in general.[3] It has not always eliminated the evil of deficits at the end of the fiscal year. The excuse is offered that no form of government could have availed to prevent the increase of municipal tax rates and indebtedness during the past half dozen years, and there is much force in that contention. Save in a very few instances the city-manager plan has not yet had a full and fair trial. We have yet to see what it can accomplish under normal conditions.

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[1] It will be recalled that the Cleveland charter provides for the election of the city council under a system of proportional representation. See *above*, pp. 281-283. The council will consist of twenty-five members.

[2] In Dayton, the parent city-manager municipality, an attempt to abandon the plan was defeated by about 9000 votes at the election of November, 1922.

[3] In some cases the city manager has been greatly handicapped by the burden of a floating debt carried over from the preceding administration.

The Most Important Factor in Determining Success or Failure is the Manager Himself.

One thing, however, has become plain enough, namely that the city managers are themselves destined to be the biggest factors in determining the ultimate success or failure of the plan. The framers of the Dayton charter realized this, and insisted that the commission should have an absolutely free hand in selecting the best man available, either from inside or outside the city. Other communities have followed the same course, and have given their commissions or councils a like discretion. It is in accord with the spirit of the plan that a non-resident shall be chosen without any hesitation if he seems to be the best man in sight; likewise that he shall be paid a salary in keeping with his attainments, and that when installed in office he shall be left there so long as his work proves satisfactory. There is assuredly no fault to be found with these ideals; it would be an admirable thing if they could be transformed into realities. But the practical question is whether American cities, as their electorates are now constituted, are going to live up to them.

The Difficulty of Securing Capable City Managers.

Dayton began by setting an excellent example. The commission went outside the city in making its first appointment, chose a man of unquestioned administrative ability, and voted him a salary of $12,500 per year—nearly three times what it had paid the mayor under the old form of government. Other cities displayed similar liberality and for a time there was a brisk demand for competent men, a demand which greatly exceeded the supply because no training-school for city managers existed, nor was there any private vocation which could be looked upon as properly fitting men for the exacting duties of the new position. The cities, therefore, found it necessary to select managers on the basis of their general qualifications. Graduates of engineering schools were preferred on the theory that most of the city manager's work would relate to the supervision of the physical services —streets, buildings, water supply, sewerage, and parks. Sometimes, however, a lawyer was appointed to the post, or a banker, or occasionally someone whose only profession was that of a public officeholder. The larger places, when the plan got well under way, began to draw their managers from the smaller communities, choosing men who had made a success of their managerial duties in towns. The prediction was made that the plan would work out as in Germany where burgomasters have moved by promotion from one community to another.

The Clamor for "a Local Man."

But it soon became apparent, unhappily, that neither the appointment of outsiders, nor high salaries, nor permanence of tenure was destined to be an invariable feature of city-manager government. In some cities the clamor for a "local man" was not long in making itself heard. Protests began to be voiced against the idea of "bringing in a carpet-bagger to run the city." "Why go afield for a manager when there are plenty of competent men at home?" The spirit of localism is stronger in the United States than in other countries; it shows itself in a multitude of ways and cannot be easily broken down.[1] So the appointing authorities have felt themselves constrained, even against their own best judgment, to take this prejudice into their reckonings. Although Dayton went to Cincinnati for its first manager; it found its second one at home. The Ashtabula council chose one of its own members as its first city manager; for its second appointment it selected the local postmaster. Examples could be multiplied. The habit of selecting a local man is not yet general by any means; but it is gradually becoming so. Sometimes the issue is brought to the front at the municipal election by a demand that candidates for election as commissioners shall pledge themselves to choose as city manager some resident of the municipality. This is a pledge which candidates, for tactical reasons, often feel obliged to make even though they dislike to do it.

How the Spirit of the Plan is Sometimes Evaded.

In a few cases the attempt has been made to exact from candidates a promise that, if elected, they will vote for some designated individual, in which case the main issue at the election is whether this man or that man shall be ultimately chosen manager,—the commission thus degenerating into a sort of electoral college with its action determined in advance. In one or two instances, by this procedure, the people have really elected the city manager at the polls; the commission merely ratifying their choice when the time came.

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[1] For example, in the popular insistence that congressmen shall be residents of the district electing them and the customary provision that none but residents may take the civil service examinations in states and municipalities. There are no such requirements either by law or by custom in European countries.

The Most Serious Danger Which the City-Manager Plan Now Faces.

This way of doing things, if it should become general, would soon bring the plan to grief. Administrative skill and experience cannot be secured in American cities by any form of popular election. Insistence on the appointment of a local man is almost certain to mean, in the long run, the selection of some local politician who is influential enough to promote the election of his friends as members of the commission. If the people will tolerate it, politicians will electioneer for the office of city manager as they have electioneered for the office of mayor; they will organize, build up political machines, and endeavor to see that men of independent attitude are not elected to the commission. From a pledged-in-advance or ring-controlled commission it would be but a short step to the direct election of city managers by the people. If it ever becomes apparent that the commissioners are not free agents the people will insist on taking the choice of the city manager in their own hands. They will supplant indirect by direct election. This is not a prophecy; it is merely a statement of what has always happened in similar circumstances. In America when the voters do not like the way officials are nominated or elected by their representatives the usual remedy is to have the people do the job themselves. That is why we changed the method of choosing senators; that is why the direct primary has replaced the party convention. It is essential to the preservation of the city-manager plan, therefore, that the choice of the manager be made by a commission which is unpledged and free to select either an outsider or a local man as it may deem best. No system of appointment can ever achieve satisfactory results if the appointing authority is reduced to the mere function of registering decisions which have been made for it by others.

An Analogy.

The nearest analogy that we have had to the appointment of a manager is to be found in the organization of the public school system. In every American city there is a school board or board of education, the members of which are (with a few exceptions) chosen by popular vote. This board, while exercising a general control over all questions of educational policy, deputes the actual administration of the schools to a superintendent who is in effect the board's general educational manager. In choosing their superintendents the school boards have had no hesitation in going outside the city; they feel no obligation to select a local man. What they seek is a man whose qualifications are such that he can manage the schools efficiently and economically, without friction or turmoil. On the whole they have succeeded in securing such men and in making the school superintendency a professional career, not a politician's job. But in some cities the demand for a local man in this post has made itself felt as an issue in school elections and almost always with results that have been detrimental to the best interests of the educational system. One of the best ways to keep local politics out of the school system is to put the administration of the schools in the hands of a man who has no local affiliations. What is true of the school superintendent is equally true of the city managership.

The Salary of the City Manager.

The greatest problem of city-manager government is to get the right manager. But no city can hope to obtain a competent manager unless it is prepared to pay the price. It must pay a higher salary than it was accustomed to pay its mayor. But local sentiment often recoils from doing this. A business corporation with an annual turnover of a few million dollars does not hesitate to pay its manager fifteen to twenty thousand dollars in salary each year; but the people of the city balk at doing anything of the sort. Dayton paid its first manager $12,500 per annum, but this action was made the basis of continual criticism on the part of the labor leaders and when the time came to choose a new manager the salary was reduced to $7500. Other cities have encountered the same obstacle. There are many voters to whom ten thousand dollars looks more like a fortune than a salary. If you assure them that business corporations pay their managers a good deal more than this, they will merely reply that it is more than they are worth, and that if managers got less, the workmen would get more. The average voter thinks of the city manager in terms of work rather than in terms of responsibility. The position looks to him like a soft job, no more difficult than that which the mayor has been performing. He does not realize the breadth of the difference between the competence of a political pot-hunter and that of a skilled administrator.

It is readily demonstrable, of course, that the position of city manager requires professional and personal qualities of a high

Cities Must Pay for Skill at the Market Price.

order, and that it demands from the incumbent a degree of administrative capacity which would command a high scale of remuneration in private employment. The successful city manager must not only be well versed in the technical phases of city administration; he must have energy, and good judgment; he must be able to get along with his superiors and with his subordinates. Men possessing these qualities are none too plentiful; their services are worth a good deal to large corporations. They will not serve the city for less; on the contrary they are almost certain to insist upon more, for private employment offers promotions and security of tenure, which the service of the city does not. Thus far the profession of city manager has given very little indication that it affords a promising career. Nearly half the men who have entered it since 1914 are already out and at something else.[1] Very few have managed to stay in the same office more than three or four years. Many have found the responsibilities too onerous or the salaries too low and accordingly have taken the first good opportunity to transfer into private employment. Not a few have proved unsatisfactory and have been dismissed, in some cases without good reason.[2]

Why Some City Managers Have Failed.

It is not surprising, however, that dismissals from office have been frequent. Many managers, appointed solely on their technical qualifications, have shown themselves to be deficient in the personal qualities needed. Colonel Henry M. Waite, the first city manager of Dayton, once expressed the opinion that a successful manager "must be an executive, must know how to handle men, must be fair and just, must be firm and polite, and must have the courage of his convictions." This is a large order to fill on a salary of three or four thousand dollars a year, especially when cities insist that the appointee shall be a man of technical education and experience as well. It is easy enough to obtain, at almost any figure, an official who knows something about the technical end of road building or sewer construction but who lacks competence as an executive or organizer.

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[1] The Sixth Year Book of the City Managers' Association (1920) contains the names of 167 managers in service. Only 68 had served more than two years.

[2] In a few cities there is an arrangement by which the city manager may be recalled from office by popular vote and in one or two cases the manager has been peremptorily ousted from office in this way. Making the manager subject to recall is out of harmony with the spirit of the managerial plan.

For a modest salary a city can also obtain the services of somebody who possesses a fair degree of administrative capacity but who has no competence as an engineer. To obtain an official who is strong in both capacities, who can get results without creating antagonisms—that is a far more difficult problem.

Too many city managers have been strong-headed, untactful, visionary. The most common ground for dismissal has been inability to work harmoniously with the commission. In some cases the newly-appointed managers have found a hostile attitude among the subordinate officials which they have not been able to overcome. In a few cases the trouble has been due to the failure of the city-manager to deal tactfully with the newspapers and the public. The city-manager is a busy man. He cannot spend time making himself popular as mayors are in the habit of doing. Some cities have tried as many as three different men in three successive years and found each unacceptable. It is often difficult to tell where the blame should rightfully be placed.

The City Manager and Local Politics.

Some city managers have made a speedy failure because they could not resist the temptation to take a hand in local politics. This temptation, of course, is hard to resist. A manager, for example, proposes some public improvement which he believes to be very urgently needed by the city. The commission accepts his recommendation and asks the voters at a special election to authorize the issue of bonds in order to secure the necessary funds. But before the people will authorize the loan they want to know all about the proposal. And who is better fitted to explain it than the manager? He originated the project; he has the facts and the figures. So he lets himself be persuaded to explain it in the local newspapers, to advocate it to the chamber of commerce, to the league of women voters, and to various other bodies. At these gatherings he is expected to answer questions about it and to make reply to any objections that may be raised. Presently he finds himself a leader of the bond-issue forces and everybody who is on the other side feels aggrieved. So, no matter how the campaign may eventuate, the manager will have made himself some political enemies.

It is essential, then, that the city-manager shall keep clear of local politics, but if so who is to supply the community with its political leadership? Good, democratic government must rest upon something more than mere mechanical efficiency. It postulates a vigorous interest on the part of the people, an interest in city issues, in city politics. This popular interest will demand leadership and find leadership. If it does not find leadership inside the established city government it will find it outside.[1] The city manager, accordingly, finds himself in a difficult position. The people look to him for what he cannot give except at the risk of making his own position insecure.

The Need for a More Lenient Attitude.

Certain it is, in any event, that the fault has not been all on one side. Commissioners have often been unreasonable and unjust. In many cases they have not lived up to the spirit of the plan; they have claimed all the credit when things have gone right and have made the manager a scapegoat when things have gone wrong. Sometimes they have undermined the morale and discipline of his subordinates by a campaign of rumors and whisperings. The manager comes to the city a stranger, unacquainted with its people, its politicians, its civic organizations, its self-seekers, hobby-riders, cranks, and crotchets; he must beware of traps and pitfalls, and even though he exercise extreme caution he is likely to slip into some of them. The position is one for which a man cannot be educated and trained in the ordinary channels. Experience is the only thing that can teach a city manager what to do and what to avoid; but in the process of acquiring experience he may make mistakes and be dismissed. The city manager ought to be accorded more leniency and consideration than have usually been accorded him by the city authorities, the newspapers, and the public. It takes time and patience to build up a new profession.

Disputes as to Jurisdiction Between Commissions and Managers.

Serious difficulties have arisen, and are bound to keep arising, with respect to the precise delimitation of the city manager's powers. The city charter usually provides that the commission shall not interfere with the city manager in the performance of his duties; some charters go so far as to make any such interference punishable by the courts.[2] But stringent provisions of law do not much avail unless the commissioners are ready to observe them in spirit. To the manager who is trying to retain a precarious hold on his position a mere hint from the commissioners may be tantamount to an order. The commissioners need not openly interfere; they can merely suggest things or let their desires become known in some roundabout way. It is broadly intimated in the local newspapers, for example, that while the commissioners desire the manager to have a free hand they are of the opinion that Mr. So-and-So would be a good director for this or that department.

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[1] For a further discussion of this point see the article entitled "Thoughts on the Manager Plan" in the *National Municipal Review*, Vol. XII, pp. 176-180 (April, 1923).

[2] "Neither the council, nor any of its members, shall dictate the appointment of any person to office or employment or prevent him from exercising his own judgment in the appointment of officers or employees in the administrative service. Except for purposes of enquiry the council and its members shall deal with the administrative service solely through the

The Question of Patronage

Seekers of jobs and favors often go to the members of the commission, not to the manager. They know the routes of indirect influence; they realize that while the manager appoints the city officials, it is the commission that appoints the manager. The laws can prohibit any interference with the manager's appointments, but they cannot prohibit the commission from dismissing him at any time. This privilege of dismissal is one which cannot be abridged without throwing away the keystone of city-manager government. And so long as the commission has complete freedom to employ and dismiss the city manager he cannot be unmindful of its wishes in individual cases, no matter how these may be communicated to him. The members of the commission are not protected against pressure from the public. It is natural that they should reflect the public attitude towards the actual work of administration, which is what they are elected to do. A plan of local government which lodges final responsibility with an elective commission and independent administrative powers in the hands of an appointive officer may be sound in principle but it is bound to encounter many obstacles of a very practical sort, at least until such time as traditions of administrative independence become firmly established in America as they have been in England. Theoretically the power of an elective body to appoint and dismiss an administrative official at will is not inconsistent with the exercise of a large measure

manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager either publicly or privately. Any such dictation, prevention, orders or other interference on the part of a member of the council with the administration of the city shall be deemed a misdemeanor, and upon conviction thereof the member so convicted shall be fined not exceeding one hundred dollars and may, in the discretion of the court be removed from office." *Charter of Norfolk, Va.*

of independence by the latter. Of this English cities afford a striking illustration. But whether it is practicable in American cities still remains to be proved.

The Future of the City-Manager Plan.

On all these matters, however, the temptation to venture anything in the way of predictions ought to be resisted. The city-manager plan is yet in the experimental stage. The lapse of another half-dozen years will demonstrate, probably beyond much question, whether the various difficulties which it is now encountering can or cannot be overcome. The world has had no previous experience with a municipal system of precisely this type. The city-manager plan was not transplanted from Prussia although it bears some resemblance to the traditional system of municipal administration in that country. It is the American plan of business organization adapted to the use of the city. Dayton took its cue from the National Cash Register Company, one of the best organized and most successful business concerns in the country; other cities have copied Dayton's charter without much change. So there is nothing un-American about it; it is an indigenous product of the soil. On paper the plan has much to commend it; but unfortunately it is never possible to ascertain, except by years of experience, whether the practice of a government will run close to its design. It has often been argued that American cities could greatly improve the efficiency of their administration if they would only place trained experts in charge of it. Here at least is a plan that gives them full opportunity to do so. But the awkward fact remains that under no plan of democratic government can the employment of experts be made compulsory against the wishes of the voters, or against the will of those whom the voters elect. The city-manager plan provides a means, but it does not guarantee the attainment of the end. It is "not the only one for reaching the end in view, but it is the best that has yet been proposed for American cities, and the one most in harmony with the spirit of our institutions." [1]

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[1] A. Lawrence Lowell, in *Municipal Program* (New York, 1919), p. 45.

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CHAPTER XXII

THE GOVERNMENT OF METROPOLITAN COMMUNITIES

The Growth of the Metropolitan Community. The twentieth century seems destined to be an age of metropolitan communities. Great cities grow by accretion. Satellite industrial towns gather around them, desirous of obtaining the advantages which go with metropolitan access while avoiding the drawbacks of a downtown location. Huge industrial plants uproot themselves bodily from the center of the urban circle and transplant themselves to the rim of it, a dozen miles away. Residential suburbs spring up in the intervals between. With the development of rapid transit and auto transportation the circle keeps gradually widening. In this way there develops a mosaic of varied communities, a dozen or perhaps a score of them, each with its own municipal identity and its own independent local government. The original municipality becomes the core of a metropolis. This process is going on all over the world, but more especially in the United States of America.

Its Ear-Marks. The earmark of a metropolitan community, however, is not its size or its disintegration, but the function which it performs. The great metropolis concentrates with its sphere of influence the nerve-centers of a wide and varied economic organization. It is the gathering-place for the products of the surrounding district; it is the point from which the hinterland gets its wares and the point through which the hinterland trades with other metropolitan communities. "If we wish to visualize the whole metropolitan mechanism, we have only to think of a web with the master spider in the center."[1] While, therefore, the great metropolitan community with its concentric rings of industry and trade may be politically a crazy-quilt of separate entities it is none the less a single economic unit. It is the inevitable creature of economic forces which are too strong to be resisted.

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[1] N. S. B. Gras, "The Development of Metropolitan Economy" in the *American Historical Review*, Vol. XXVII, p. 699 (July, 1922).

Economic Unity and Political Disintegration.

So we have economic unity and political disintegration. The city as a political entity is not coterminous with the metropolis as a social and economic fact. The social and economic homogeneity of the whole area results in the creation of problems of a metropolitan character with which the separate municipalities are quite incompetent to grapple. These problems cut athwart municipal boundaries, paying no heed to them. Problems in relation to public utilities afford a good illustration. The same street railway and the same lighting company operate in several local jurisdictions, yet in each case the service is by its very nature a unit and in all governmental dealings must be so treated. The need for a unified policy also arises in relation to main thoroughfares, parks, and beaches for the use of the whole metropolitan population. The problems of water supply and sewage disposal also demand, in many cases, common action on the part of all the municipalities within a given geographical area. And so it is with the protection of the public health, with fire protection, and with other fields of public service in which municipal boundaries count for nothing except insofar as laws and men compel them to do so. It presently appears, moreover, that a multiplicity of local governments, operating in the same area, makes for procrastination and waste. Local jealousies retard progress in matters which concern them all. The interests of the whole are sacrificed to the selfishness of the parts. Out of all this is sure to arise, in due course, some movement for unification, complete or partial, such as will ensure the broad treatment of metropolitan problems by a centralized authority. Such movements usually have an uphill road to travel, for small communities are traditionally averse to being swallowed up in larger aggregations, but the propulsive forces are also strong and in most cases some sort of metropolitan unity is only a matter of time.

The Need for Political Integration.

This has been demonstrated, over and over again, in Europe and America alike. The metropolitan community insists upon being politically integrated as London did in 1888, or as New York did in 1898, or as various smaller aggregations of cities and towns, both European and American, have done at various times.[1] It is not merely a matter of securing for the principal city a higher place in the census returns—of setting Boston in fourth rather than seventh place among American cities, for example. The political dismemberment of a community which has become metropolitan in its social and economic structure is an obstacle to all great public undertakings. No such mosaic of separate municipal jurisdictions would ever be consciously created; it is invariably the product of historical accident.

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[1] For a summary of these various consolidations in the United States see C. C. Maxey, *The Political Integration of Metropolitan Communities*, issued as a supplement to the *National Municipal Review* (August, 1922).

The Methods of Metropolitan Unification: Federation, Consolidation and a Compromise Between the Two.

There are three ways in which this unification may be effected. The first is by the creation of a municipal federalism, an arrangement under which the various local units retain their corporate existence and continue to exercise jurisdiction over strictly local matters while a central authority is established to deal with the larger problems. London affords the most notable illustration of this plan. The second method is to annex the encircling municipalities outright, extinguishing their local governments and transforming them into mere *arrondissements* or wards of the greater city. Paris is a metropolitan city constituted in this way. Many less conspicuous examples may be found in the United States, notably Philadelphia, Chicago, Pittsburgh, and Los Angeles. The dominant municipality reaches out like an octopus and drags in everything within reach. Third, there is a possible compromise between the two foregoing plans. The absorption may result in the establishment of a municipality which is neither wholly federal nor wholly unified in form but a combination of both. Such consolidations sometimes lean rather heavily, however, to the side of unification, as in the case of New York City. There are boroughs in New York as in London, but they are mere ghosts of local self-government. London, Paris and New York are the world's most notable examples of great metropolitan communities in which political authority has been wholly (or almost wholly) integrated, and each represents a different type of consolidation.[1]

London

What is *London?*

There are three Londons, the City of London, the Administrative County of London, and the London Metropolitan Police

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[1] It should be understood, of course, that they are not the only examples. There are many other examples, in Europe and America. The federation of Greater Berlin, which was established in 1920, is briefly described in a note at the end of this chapter (p. 458).

District.[1] The Lord Mayor of London is the titular head of an ancient city which has a smaller population than that of Galveston, Texas; the London County Council exercises jurisdiction over a population greater than that of Chicago; the Metropolitan Police of London cover an area which includes a population of more than seven millions and thus forms the largest urban community in the world. Much confusion has arisen in the American mind by reason of a failure to keep these three Londons apart. Englishmen are mindful of the distinction, but most Americans are not.

The *City.*

The City of London is the London of Pepys and Macaulay. It has an area of about one square mile and a resident population of about thirty-five thousand. It is the historic community which shelters the Bank of England, the Royal Exchange, the Guildhall, the Tower, and many of the great business houses. During the day hours its narrow streets are alive with the busy multitudes; at night it is as quiet as a provincial town. When this original area became over-populated, more than two centuries ago, new parishes were formed, one after another along the fringe outside—each independent of the city. These surrounding communities grew rapidly during the nineteenth century and eventually outstripped the old city many times over. The latter did not proceed to expand itself by annexation after the American fashion; on the contrary it has retained to the present day its historic boundaries (with some slight alterations) and, what is even more surprising, its archaic frame of municipal government.

Its Government.

The City of London is still an "unreformed" municipal corporation, having been exempted from the general reorganization of 1835. Its government is an interesting survival from the days of gilds and livery companies embellished with many of the strange trappings of mediævalism. The post of Lord Mayor is altogether honorary; it goes each year to one of the two senior qualified aldermen.[2] There are three city councils (or courts, as they are called), namely, the Court of Aldermen, the Court of Common Council, and the Court of Common Hall; but the actual authority is for the most part vested in the Court of

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[1] Strictly speaking there is a fourth London, namely, the London Postal District which has different boundaries from the others.

[2] The Lord Mayor is chosen annually by the Court of Aldermen from two senior aldermen nominated by the Court of Common Hall.

Common Council, which is a body of 232 members.[1] The city has its own police and for certain other purposes is exempt from the jurisdiction of the County of London. Despite the cumbrous and archaic nature of its administrative machinery it is efficiently governed.

The *County* of London.

The surrounding parishes, each endeavoring to be a law unto itself, floundered in a veritable chaos until about twenty-five years ago when they were consolidated in an "administrative" county and placed under the government of a body known as the London County Council. This administrative county (which cuts into the older counties of Middlesex, Surrey and Kent) includes an area of about 117 square miles and a population of about five millions. The London County Council is a large body with 118 councillors and 19 aldermen. The councillors are elected triennially by the voters—two from each of 57 districts and four from the "city." The aldermen are chosen by these councillors, usually from among their own number, and serve for six years. The council, after the aldermen have been elected to its membership, chooses a chairman. It may elect a non-member to this post if it desires; but it rarely does so.

Organization and Powers of the London County Council.

The London County Council was given jurisdiction over matters which were deemed to be of general importance. These include main highways,[2] main drainage, fire protection, tunnels, ferries and bridges, public health, housing, parks, transportation and schools. It does not control police, water supply, subsidiary streets and drainage, waste-removal, street lighting, poor relief, public libraries, or the navigation of the Thames. The London County Council has authority to levy taxes and to borrow money. Its administrative work is carried on through committees and sub-committees of which there are now sixty or more, appointed by the council itself. The council appoints all heads of departments and subordinate officials; but most of the latter are now chosen under civil service rules.

When the administrative county was created in 1888 no attempt was made to reorganize the structure and powers of the various parishes, seventy-eight of them, whose territories had been taken in. For a time they went on managing those municipal services which had not been transferred to the London County Council. But this arrangement became increasingly unsatisfactory; there were too many diminutive authorities with limited jurisdiction. So Parliament, in 1899, passed the London Government Act which consolidated the multitude of small parishes into twenty-eight metropolitan boroughs. Because an endeavor was made to follow certain historic municipal boundaries these boroughs are by no means nearly uniform in area or population. It was the intention of Parliament to endow the metropolitan boroughs with a substantial amount of local autonomy. Each borough, therefore, has a frame of government consisting of a mayor, not more than ten aldermen, and not more than sixty councillors, all sitting together. These officials are chosen as in the other boroughs of England.[1]

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[1] The Court of Common Council contains 26 "aldermen" and 206 "commoners." Both are elected by the twenty-six wards, the aldermen for life and the commoners for a one-year term. The Court of Common Council has authority to change its own constitution, when it so desires, without application to Parliament.

[2] The work of maintaining the main highways, although paid for by the county, has been devolved upon the metropolitan boroughs.

The London *Boroughs.*

The powers of the London borough councils, however, are not so extensive as those possessed by the borough councils elsewhere, for the reason that the London County Council has charge of the wider services. In general the metropolitan borough councils are entrusted with the work of local highway improvement including the maintenance, paving, lighting, cleaning, and sprinkling of the streets. They have charge of local sanitation and exercise certain powers with respect to the control of communicable diseases. They have authority to erect workmen's dwellings and to own electric lighting plants.[2] Various other functions have been given to them from time to time by adoptive acts of Parliament. The borough councils have authority to levy taxes and to borrow on the credit of the municipality. Like all other English councils they do their work, for the most part, through standing committees, but administrative functions are largely devolved upon permanent officials whom the councils appoint.[3]

Borough Powers.

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[1] See *above*, p. 358.

[2] The water supply is managed by a Metropolitan Water Board whose members are named by the various local authorities. Navigation of the Thames is controlled by a board known as the Port of London Authority, established in 1908.

[3] All the boroughs send representatives to a Metropolitan Boroughs Standing Committee which meets quarterly for the discussion of common problems, but which has no statutory powers.

These officials include a clerk, accountant, treasurer, surveyor, engineer, solicitor, medical officer of health, and so on.

Flexibility of the London System.

The division of powers between the county and the metropolitan boroughs is not hard and fast. By agreement between the county council and a majority of the borough councils it is possible to transfer powers from one to the other, subject to the approval of the Ministry of Health. This facility for the exchange of powers has been very little used, however, since both sides have been far more anxious to get than to give. The predominance of authority rests with the county council but the boroughs continue to be important areas of community government.[1]

The Results in London.

This federal plan of metropolitan government has been both praised and criticised. It has been called, by some, a successful example of municipal federalism, and denounced by others as a makeshift affair. Undoubtedly it represents a marked improvement over the conditions which existed in London thirty or forty years ago. On the other hand there has been some overlapping of effort, with too much delegating of details to local bodies, and more or less continuous friction between the various authorities. Both county and borough elections have been afforded an incentive to the promotion of interurban jealousy. A recent writer speaks of the London borough councils as "a kind of nadir" in British municipal life, and a "caricature of civic development." Few men of energy, intelligence or ambition, he asserts, have been willing to serve on them.[2] The personnel of the councils has not been of a high standard, especially in the industrial boroughs, but it compares very favorably with that of city councils in American communities of the same character.

The London Metropolitan Police District.

The most important of metropolitan functions, that of maintaining law and order, is entrusted neither to the county council nor to the borough authorities. Within the limits of the "City" the police are under the control of a committee of the Court of Common Council. But the surrounding area, comprising nearly 700 square miles, was formed into a Metropolitan Police District in 1829.[1] This district includes the entire County of London and a considerable range of territory outside, the whole district today having a population of nearly seven and a half millions. The metropolitan police system is in charge of a commissioner appointed by the Home Secretary; the cost is borne in part by the communities within the District and in part by the national government.

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[1] For a concise account of borough powers and their relation to county powers see P. A. Harris, *London and Its Government* (London, 1913), or the chapter on "The Government of London" in Sir Aston Webb's *London of the Future* (New York, 1921), pp. 213-232.

[2] C. F. G. Masterman, *How England is Governed* (New York, 1922), p. 147.

Paris

The Evolution of Paris.

Paris, unlike London, never tried to keep its municipal authority restricted within the original territorial bounds. From its mediæval location on an island in the Seine, the city spread itself along both banks of the river and far back from the water-front, extending the jurisdiction of its officials as it went. This was the more easy because the city officials, in the period preceding the Revolution, were appointed by the crown and their authority could be widened at any time by royal decree. Paris did not come into the nineteenth century a huge checkerboard of independent parishes and communes, but as a consolidated metropolis. Nevertheless, the French municipal code, under which the other cities of the Republic are governed, does not apply to Paris. The capital is, and always has been, regarded as a special area of local government requiring stricter supervision than the rest of the country. At no time has it been given a large degree of municipal home rule. Its present *régime exceptionnel* is based upon a law enacted immediately after the establishment of the Third Republic (April 14, 1871), but which has been modified somewhat by various laws and decrees since that date.

Basis of Its Present Government.

Reasons for the Special States of Paris.

There are several reasons for placing Paris under a special dispensation. It is by far the largest city in France, being five times as populous as its nearest rival, Marseilles. It is the seat of government. National property of enormous value is located within its bounds, including legislative halls, executive buildings, museums, libraries, palaces and monuments. The national treasury has at various times expended large sums in the beautification of the city. But the most important reason for holding Paris under close national supervision may be found in the reputation for political turbulence which the city acquired during the century preceding the establishment of the Third Republic. Every one of the numerous revolutions which upset the dynasties and governments of France during the period between 1789 and 1871 began in Paris; the rest of the country merely acquiesced—sometimes because there was no alternative. The city contains only one-tenth of the entire French population; but its influence upon the direction of national affairs has proved decisive on many occasions. The authorities of the Third Republic have deemed it wise to take no chances.

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[1] See Vol. II, Chap. XXXI.

The Prefects of Paris.

Unlike the other cities of France, Paris is governed as a department, not as a commune. The city, with a small fringe of territory outside, forms the Department of the Seine, one of the eighty-nine departments of the Republic. Like the other departments its chief administrative officer is a prefect—the Prefect of the Seine. He is appointed by the President of the Republic and holds office for no definite term. His position is a dual one, in that he is the agent of the national government and the chief officer of local administration. He has the usual powers of a prefect; in addition he exercises those powers which pertain to the mayor in other French cities, the only important exception being that he does not control the police. In one capacity or another the Prefect of the Seine exercises a wide range of authority; his office has charge of streets, public works, sanitation, water supply, health, education, poor relief and practically all other matters of metropolitan concern except the preservation of law and order. This last-named function is entrusted to a colleague, known as the Prefect of Police, who is also appointed by the President of the Republic.[1] The Prefect of the Seine has also the duty of preparing the annual budget which he lays before the municipal council of Paris for its concurrence. The council may increase or decrease any item in the budget subject to the restriction that it must provide in full for such services as are made mandatory by national law. The budget does not become effective until it has been approved by the Minister of the Interior.

Their Functions.

The municipal council of Paris is a body of eighty members

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[1] Police jurisdiction in France is broader than in England or the United States. It includes not only the maintenance of law and order but the enforcement of sanitary requirements, the oversight of dangerous occupations, and the inspection of buildings.

The Paris Municipal Council.

chosen by popular vote for a four-year term. The city is divided into twenty arrondissements; each of which is sub-divided into four districts or precincts, and each of the latter elects one councillor. The qualifications for voting and the procedure at elections are the same as in the other cities of France.[1] With the addition of eight councillors from the territory immediately outside the city the municipal council of Paris serves as the general council of the Department of the Seine.

Its Powers.

In its powers and procedure the Paris municipal council is like the other city councils of France, but with a few important differences. It meets four times a year, with additional sessions when necessary; it elects its own presiding officer and does a large part of its work through committees. But unlike the councils in Marseilles, Bordeaux, Lyons, and the other French cities it elects neither mayor nor adjoints. The two prefects are not under its control; they are responsible to the national government alone. It cannot, therefore, direct the course of administrative policy. It may make recommendations to the prefects, and it does so frequently by passing resolutions; but the prefects are under no legal obligation to follow such recommendations. As a matter of practical politics, however, the Prefect of the Seine finds it very desirable to work in harmony with the municipal council so far as this can be done without serious deviation from his own plans, for the council holds the purse strings and its good-will is needed when new outlays are involved. For this reason the resolutions of the council carry considerable weight at the Hôtel de Ville and are not merely thrown into the waste basket. Its powers and influence are not so great as those of the London County Council, but on the whole they are more extensive than those of the board of aldermen in New York City.

Relations Between the Council and the Prefects.

An obstacle to harmonious co-operation between the prefects and the council arises from the usual composition of the latter body. Paris is more radical than France, and always has been. The council reflects the radicalism of the city, while the two prefects, as the representatives of the national government, typify the relative conservatism of France as a whole and especially that of the national bureaucracy. Their professional training inclines them to follow traditional lines of administration. These differences in point of view sometimes lead to serious friction between the two branches of Paris government; but the prefects have the power and prestige of the national government behind them. In the long run their wishes usually prevail. The government of Paris, like that of New York, is largely executive; while that of London is predominantly legislative. The Prefect of the Seine and the mayor of New York are the pivots of authority in their respective communities, with this fundamental difference, however, that the prefect is the agent of higher powers while the mayor is not.

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[1] See *above*, pp. 235-236; 272-273.

The Municipal Staff.

The supervision of municipal administration is centered at the Hôtel de Ville. Here the Prefect of the Seine has both his offices and his residence. He is assisted by a large headquarters staff, the higher officials being appointed by the President of the Republic, while those of lower rank are chosen by the prefect himself. Nearly all the vacancies, however, are filled by the promotion of officials already in the service. Certain positions, chiefly of a subordinate nature, are filled by a plan of civil service competition, the examinations being conducted by an appointive civil service commission or *jury d'examen*. Removals from office are very uncommon, and are rarely if ever made for purely political reasons. The whole service is organized into bureaus and sections with a chief or deputy chief at the head of each. The work of the officials is marked by a strictly professional spirit.

The Mayors of the Arrondissements.

Not all the administrative work, however, or even the larger portion of it, is concentrated at the Hôtel de Ville. In each of the twenty arrondissements of Paris there is a *mairie* or ward-hall in which much of the routine work is done. The prefect's agent in each arrondissement is a *maire* who is appointed by the national government and corresponds to the sub-prefect in the arrondissements outside the Department of the Seine. Each *maire* is assisted by from three to five adjoints similarly appointed. In addition a considerable professional staff is distributed among these local headquarters. There is no arrondissement council, but special commissions of citizens are frequently appointed to advise the *maire* on special matters.

The government of Paris, surveying it as a whole, is a curious composite, an attempt to combine the framework of a department with that of a municipality. The distinguishing feature

The Centralized Character of Parisian Municipal Administration.

of the system is its centralization; the twenty arrondissements possess no measure of local autonomy like that accorded to the London boroughs. The *maires* are responsible to the Prefect of the Seine, and he, in turn, to the Minister of the Interior. The voters of the city, while they elect the members of the municipal council, do not exercise any measure of direct control over any of the administrative officers.

Is the Plan Satisfactory?

To a considerable portion of the Paris electorate the present plan of metropolitan government is far from satisfactory. Popular interest in the council elections is dulled by an appreciation of the fact that the council is not vested with any immediate control over the administration. The candidates for the council are for the most part junior politicians who are seeking to groom themselves for subsequent election to the Chamber of Deputies. The council meetings are very much given to oratorical pyrotechnics which provide the councilmen with a certain amount of newspaper publicity, but otherwise accomplish little. What many Parisians desire is the right to control, more directly, the administrative policy which is now dominated by the prefects. To this end various schemes of reorganization have been proposed during the past forty years, but they do not appear to have made any substantial headway. Senators and deputies from the rural districts distrust the metropolis; the tradition that the capital must be kept under bonds for good behavior is still strong in spite of the fact that Paris has now fomented no serious trouble for more than half a century.

New York

The Evolution of New York.

In the frame and spirit of its government New York City combines the outstanding features which mark the organization of both London or Paris. It is federal in form but unified in fact. It has far more freedom from higher control than Paris and somewhat more than London. The evolution of New York into a metropolitan community, however, bears a close resemblance to that of London in that an old city gradually found itself encircled by a ring of separate municipalities whose independence made the solution of metropolitan problems intolerably difficult. The center of social and economic life lay on the island of Manhattan, but for a dozen miles round about in all

The Consolidation of 1898.

directions governmental disintegration ruled supreme. Cities, counties, villages, and school districts elected officers, made regulations, levied taxes, floated bonds, and granted franchises without any regard for the common interest. The chaos of local authorities retarded all attempts to solve the great problems of transportation, housing, main thoroughfares, and public safety. In due course, therefore, the state legislature intervened to secure a consolidation of the governmental authority for the whole metropolitan area including New York City, Brooklyn, Long Island City, Flushing, Mount Vernon and various other municipalities. In 1896, after two years of manœuvering and filibustering, a law providing for the creation of Greater New York was passed and approved by the governor. It went into effect on January 1, 1898.

The New York and London Consolidations Compared.

At first glance the New York consolidation of 1898 might seem to be along the lines of London's earlier experiment, but in essentials the two were widely different. In London a host of municipalities were combined into a county; in New York five counties were amalgamated into one municipality. The administrative county of London includes twenty-eight boroughs; New York City contains only five. New York has one mayor for the entire community, with a president for each borough; in London each borough has its mayor, and there is no single executive head for the whole. There is a very wide difference, moreover, as respects the division of powers between the general and the borough governments in these two great cities. In London each borough is a municipal entity of very considerable importance, with its own mayor and borough council, with power to levy taxes and to borrow money, to build streets, own lighting plants, erect municipal tenements, establish public libraries, and perform many other local functions of substantial importance. In New York there are no borough councils, and the powers of the borough presidents are relatively small. Finally, as will be explained a little later, the borough presidents in New York are *ex-officio* members of the general city government; in London there is no such direct link between the borough and the county.

What Greater New York Includes.

New York City contains an area of about 300 square miles, with a population of about six millions. It comprises (*a*) Manhattan Island, which now forms the Borough of Manhattan and the County of New York, (*b*) the former city of Brooklyn, which covers all of Kings County, (*c*) Staten Island, which now forms the Borough and County of Richmond, (*d*) part of Long Island north of Brooklyn, forming the Borough and County of Queens, and (*e*) the area above the East and Harlem rivers on the mainland, now forming the Borough and County of the Bronx.[1] It will be noted that these five boroughs cover an area nearly three times that of the County of London, but less than half that of the London Metropolitan Police District. Whether New York or London is rightly entitled to rank as the world's most populous city depends upon the basis of comparison. New York is much larger than the County of London in both area and population, and smaller than the London Metropolitan District in both.

The Government of New York City:

The general government of New York City rests upon a charter prepared by a charter commission and enacted by the state legislature, after the consolidation of the Greater City had been accomplished.[2] It consists of a mayor and his administrative staff, a board of estimate and apportionment, a board of aldermen, and a board of education. The mayor is elected by popular vote for a four year term. He may be removed by the governor of New York State on charges after a hearing, and the governor's action is not subject to any review. He is the city's chief executive officer and as such is charged with the duty of enforcing all laws and ordinances. He controls all branches of municipal administration with the exception of the finances and those functions which are under the jurisdiction of the five borough presidents. With a few important exceptions he appoints all the higher administrative officials and in most cases may remove them at any time. No confirmation of his appointments by the board of aldermen or by any other body is required. Subordinate officials and employees are chosen, for the most part, under civil service rules. The mayor of New York has the right to veto any order or resolution of the board of aldermen, but this veto may be overridden by a two-thirds vote. If, however, the vetoed order involves the expenditure or borrowing of money, a three-fourths vote is necessary. The mayor

The Mayor.

His Powers.

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[1] The populations of these various boroughs differ widely. By the census of 1920 they were as follows: Manhattan, 2,284,103; Brooklyn, 2,002,212; The Bronx, 732,016; Queens, 466,811, and Richmond, 115,959.

[2] This charter, of course, has been many times amended during the past twenty-five years.

is a member of the board of estimate and apportionment, and of several other boards and commissions.[1]

His Veto in Relation to Charter Amendments.

Whenever the state legislature enacts any measure relating to New York City it must be submitted to the mayor for his approval. If approved, it becomes effective; if it is not approved by the mayor it does not become effective unless re-enacted by a majority vote of the legislature. The mayor's veto over state legislation is thus a suspensory veto only. Nevertheless it has been of considerable service to him as has elsewhere been explained.[2]

The City Departments.

The city's administrative work is performed, in the main, by various municipal departments covering the entire city; but to some extent it is delegated to the presidents of the five boroughs. There are twenty-nine administrative departments under the mayor's control. He appoints their heads, whether boards or single commissioners. The most important of these departments are those which come immediately under the jurisdiction of the president of the board of taxes and assessments, the corporation counsel, the board of education, the police commissioner, the fire commissioner, the commissioner of street cleaning, the commissioner of water supply, gas and electricity, the commissioner of parks, the commissioner of plants and structures, the commissioner of docks, the commissioner of health, the tenement house commissioner, the commissioner of public welfare, the commissioner of correction, and the city clerk. Some of these officials, as, for example, the members of the board of education, are appointed for a definite term; but most of the others hold office during the mayor's pleasure. The heads of two departments, the comptroller and the city clerk, are not appointed by the mayor. The former is directly elected by the people, and the latter by the board of aldermen.

The Board of Estimate and Apportionment.

Before passing to a consideration of the organization and work of these various departments, something should be said about the board of estimate and apportionment. In its present form the board dates from 1901, although a body with the same name has existed in New York for more than a half a century. It consists of eight members, all *ex-officis*. The mayor is chairman on the board and has three votes on all questions. The comptroller, who is the elective head of the department of finance, also has three votes. The president of the board of aldermen (elected by the voters of the whole city, not by the aldermen) is a third member and has three votes. The other members are the presidents of the five boroughs, who are elected by the voters of these boroughs. The borough presidents of Manhattan and Brooklyn have two votes each, while the presidents of Queens, Richmond, and the Bronx have one vote each. The eight members of the board have, accordingly, sixteen votes in all, and the three members who are elected by the voters of the whole city control a majority of these votes.

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[1] By ancient provisions of the city charter the mayor of New York has a variety of powers which are not often used nowadays. He is a magistrate; he may by proclamation offer a reward (not exceeding $500) for the apprehension of any criminal; he may grant permission to display flags on city buildings; he may grant permission for the firing of cannon, the caliber of which must not exceed four pounds, etc.

[2] See *above*, p. 180.

Its Composition.

Its Functions.

The chief functions of the board of estimate and apportionment are as follows: (1) to prepare each year tentative budgets of revenues and expenditures for submission to the board of aldermen; (2) to pass upon all proposals for municipal borrowing; (3) to investigate and authorize all requests from the various departments for the transfer or modification of budget allowances; (4) to determine all grants of franchises; (5) to investigate and act upon all larger questions of public improvements, and all resolutions of local improvement boards relating to assessable local improvements and to see that they conform to good city planning; (6) to determine all matters relating to new positions in the city service, all transfers of employees, the elimination of positions, and changes in the salaries of department employees. For the more effective carrying out of those functions the board maintains five bureaus and about a dozen standing committees; its detailed work is carried on by these subordinate bodies but the board itself has final jurisdiction in all the matters enumerated.

The City's Budget.

By all means the most important among these various functions are the preparing of the tax budget and the granting of franchises. The tax budget is so called because it contains a list of the appropriations which are to be defrayed chiefly from taxes.[1] This budget totals about a quarter of a billion dollars per year. It is compiled, in the first place, from estimates submitted to the board of estimate and apportionment by the various departments. The procedure to be followed in considering the budget is set forth in the city charter; it includes a series of public hearings.[1] When the board of estimate has finished its work the budget goes to the board of aldermen, which may reduce or eliminate any item (except those made mandatory by law) but cannot increase any appropriation, or insert any new item, or change the conditions under which the appropriations are to be spent. When the aldermen vote to reduce or to strike out an item their action is subject to veto by the mayor but this veto may be overridden by a three-fourths vote. The board of estimate is therefore the real authority in matters of expenditure.

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[1] There is also a "corporate stock budget" which appropriates money obtained by the issue of bonds.

Franchises.

By the provisions of the city charter no franchises can be granted for a longer term than twenty-five years. An exception is made in the case of subways, where franchises may be granted for fifty years. Renewals in any case may not be for more than a further term of twenty-five years. Franchises of every kind are now granted exclusively by the board of estimate and apportionment, but the supervision of the operating companies (except railways, street railways, and omnibus lines) is in the hands of the public service commission, which is a state-appointed body. Railways, street railways and 'bus lines are under the supervision of the transit commission, which is also a state-appointed board. No franchise may be granted save after a public hearing.[2]

The Department of Finance.

A word or two should be said about the more important city departments. The comptroller is the head of the department of finance. He is elected by the voters at the same time as the mayor and for the same term. He is also subject to suspension or removal by the governor on charges after a hearing. As the chief financial officer of the city the comptroller has general charge of collecting the municipal revenues, of the audit of accounts, of borrowing, and of making payments. His department is divided into eight bureaus, and one of them, known as the bureau of the city chamberlain, has the custody of all the city's funds. The chamberlain's duties correspond to those of a city treasurer and although his office is within the department of finance, and subject to the supervision of the comptroller, he is appointed by the mayor.[1] Besides being a member of the board of estimate and apportionment, the comptroller is also a member of several other boards, such as the sinking fund commission. Next to the mayor he is the city's most important administrative officer.

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[1] See Vol. II, Chap. XLIV.

[2] From 1901 to 1905 the power to grant franchises was vested in the board of aldermen, the mayor having an absolute veto on the board's action. This plan was not found satisfactory.

The Department of Taxes and Assessments.

The department of taxes and assessments is in charge of a board consisting of seven commissioners appointed by the mayor. One of the commissioners is designated president of the board. The chief function of the board is to assess all property for purposes of taxation. This property includes real estate (whether owned by individuals or by corporations), franchises, and tangible property (such as merchandise, machinery, etc.). Special assessments are levied by a board of three assessors appointed by the mayor.

The Police and Fire Departments.

The police department of New York is under the control of a police commissioner appointed by the mayor for a five-year term and removable by either the mayor or the governor. The commissioner has more than ten thousand men of all ranks under his command. The city and district prisons are supervised by a department of correction under the control of a commissioner appointed by the mayor. The fire department is also in charge of a commissioner appointed by the mayor, but this appointment is not for any designated term. Fire prevention as well as fire protection comes within the jurisdiction of this department.

The Department of Water, Gas, and Electricity.

Some important public services are in charge of the department of water, gas and electricity. This department has a single commissioner at its head. It has jurisdiction over the sources and distribution of water supply, and the collection of water rates. It provides for the lighting of streets, parks, and public buildings, and regulates the transmission of gas and electricity in or under the streets. It has charge of the inspection of electric wires in all buildings.

The board of education, which controls the public schools of

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[1] This, of course, is an anomaly. An act abolishing the office of chamberlain was passed by the New York legislature in 1920, but was vetoed by the mayor.

The Board of Education.

the city, consists of seven members appointed by the mayor for seven-year terms.[1] This is a departure from the traditional American plan of making the school board elective. The board of education decides all matters of general educational policy but the city is divided into forty-six school districts, in each of which there is a local school board, made up of five members, appointed by the president of the borough in which the district happens to be, together with one member of the board of education and the district superintendent *ex-officio*. These district boards make reports and recommendations twice a year to the board of education. Direct management of the schools rests with a board of superintendents consisting of the city superintendent of schools and eight associate superintendents, all appointed by the board of education.

Other Departments.

The foregoing are some of the most important administrative departments, but they form only a small portion of the total list. Health, sanitation, public welfare, streets, parks, docks, plant and structures are under the control of other departments, the heads of which are responsible to the mayor. Administrative power, all along the line, is centered in the chief executive. That is the most distinctive characteristic of the New York municipal system. The mayor of New York has more real authority than the head of any other city in any country. During his four-year term he is practically supreme, particularly when the board of estimate is with him. It is true that he may be removed from office by the governor, but such removal would not take place except under conditions of extreme urgency.

Civil Service.

In the matter of subordinate appointments in all branches of municipal administration, however, the civil service laws impose an important check upon the mayor's discretion. These rules require that appointments shall be made from a list submitted by the civil service commission, a board of three members appointed by the mayor but not removable by him without the unanimous approval of the state civil service authorities. Certain positions are exempt from civil service rules, chiefly those of a policy-determining or confidential nature. Some minor posts are filled by non-competitive tests and all applicants for work as ordinary laborers are certified in the order of their application as soon as they have passed the physical examination. The total number of officials and employees whose remuneration is paid by the taxpayers of New York City is now close to one hundred thousand, which is one in every twenty of the voting population.

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[1] Two members are appointed from the borough of Manhattan, two from Brooklyn, and one from each of the other three boroughs. This board of seven replaces the old board of education, which had 46 members.

The Borough Presidents.

It has already been mentioned that some local administrative functions are performed by the five borough presidents. These officials are elected every four years by the voters of their respective boroughs. They are in a sense district-mayors, responsible for certain borough improvements and for the performance of divers administrative duties. Each has charge of highway and sewer work, the care of certain public buildings, and the enforcement of the building regulations within his borough. Most of this work, however, is actually done in each borough by a commissioner of public works whom the borough president appoints and may remove at pleasure. Each borough is divided into districts with local improvement boards made up of the aldermen from each district, and the borough president is a member of each of these local improvement boards. In Queens and Richmond the borough presidents also have charge of street cleaning. Local school boards, as has been said, are appointed by the presidents in all the boroughs. A link between city and borough government is provided by making each borough president a member of both the board of estimate and the board of aldermen. It is this that gives the New York system its outward appearance of federalism.

The Board of Aldermen.

The board of aldermen, which is ostensibly the legislative organ of the municipality, consists of president, elected by the voters of the whole city, sixty-seven aldermen elected from aldermanic districts every two years, and the five borough presidents, making seventy-three members in all. The head of each city department is entitled to a seat, but not to a vote, at meetings of the board and must attend when required. The aldermen are elected on a strictly partisan basis and are chiefly concerned with the interests of their own districts.

Its Powers.

Although the board of aldermen has lost some of its principal powers during the last thirty years, its authority is still of considerable importance. It makes and amends ordinances and has general legislative control over such things as water rates, street traffic, building regulations, and market tolls. Without the board's permission contracts exceeding one thousand dollars cannot be awarded except by public competition. It may reduce or eliminate any item in the budget except certain ones which are by law exempted from such interference, and its assent is necessary in most cases for the issue of bonds. But it no longer has any authority over franchises or licenses, and its legislative action on other matters is subject to veto by the mayor. The board elects the city clerk and the commissioners of elections.

Where the Power Resides.

Surveying the government of New York City as a whole, one can see a superficial resemblance to that of London; but there is no analogy in fact. In so far as control over the greater phases of municipal administration is centered at the city hall, the government is of a unified type; the distribution of certain administrative functions among the borough presidents is merely a concession to the forms of federalism. New York is a federation of cities by origin, but the federal idea is swamped by the administrative centralization which dominates the great city of today. The real pivot of power is the mayor.

Movements for the Unification of Other Metropolitan Communities.

On both sides of the Atlantic a movement for the political consolidation of the various cities and towns which make up a series of sprawling metropolitan areas has been under way for many years and in some instances it has made headway, notably in Berlin and in Pittsburgh. But much still remains to be done. Within Cook County, for example, there are seventy-eight incorporated municipalities in addition to the city of Chicago. Within a fifteen mile radius of Boston, but outside the city itself, there are fourteen cities, twenty-six towns, and parts of five counties, with a combined population of 750,000. Adjoining Cleveland, but not within the city limits, there are eight suburban municipalities. In Cuyahoga County, of which Cleveland forms the major part, there are ninety-three separate municipal jurisdictions. Around San Francisco, and forming an integral part of its metropolitan area, are six independent cities. The state of Rhode Island is rapidly becoming a single urban community in its population and problems—in everything but its government. In all these regions, and in many others that might be named, the need for municipal integration is steadily becoming more urgent.

The overlapping of city and county government in the United

States has provided an additional obstacle to the unification of municipal effort. Cities which, in the earlier stages of their growth, form but a small part of a county, keep increasing their population and extending their bounds until they cover almost the whole of it. Boston and Suffolk County, for example, are ninety per cent identical. In San Francisco the city and county governments have been consolidated. But in New York, despite the consolidation of 1898, the county governments still remain, though their functions have been greatly diminished. There are few large American cities in which the existing division of functions between municipal and county authorities does not make for duplication and waste of effort.

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Note on Greater Berlin

The federation of Greater Berlin, which was organized by the Prussian law of April 27, 1920, drew several cities into its fold, including Berlin, Charlottenburg, Schöneberg, Lichtenberg, Köpenick, Spandau, and Wilmersdorf. In addition, fifty-nine rural communes (*Landgemeinde*) and twenty-seven manorial villages (*Gutsbezirke*) were included, thus giving the greater city a population of about 4,000,000.

The central city government consists of an Oberbürgermeister, a Bürgermeister, an administrative board (*Magistrat*) of thirty members, and a city council (*Stadtverordnetenversammlung*) of 225 members. The two burgomasters and the thirty members of the administrative board are chosen by the city council. Of the members of the administrative board eighteen are paid members and twelve are unpaid members. One of the latter is a woman. The paid members are chosen for a twelve-year term, the unpaid members for four years only. The members of the city council are elected on a basis of universal suffrage by secret ballot according to the principles of proportional representation. For council elections the greater city is divided into fifteen electoral districts, and a varying number of councilmen (from seven to nineteen) are elected from each district. Twelve of these districts are identical with the boroughs (*Verwaltungsbezirke*) mentioned below; the remaining three are combinations of boroughs. The first council election after the establishment of Greater Berlin was fought out on strictly partisan lines, all the national parties placing their slates of candidates in the field. The result was that no single party obtained a majority in the council. The Social Democrats, however, managed to capture approximately one-third of the seats.

The Law of 1920 provided for the division of Greater Berlin into twenty boroughs (*Verwaltungsbezirke*), somewhat after the London analogy. Of these twenty boroughs, six are in Berlin proper; the others represent in part a continuation of old municipal boundaries and in part an amalgamation of small communes or villages into boroughs. For this reason the boroughs of Greater Berlin, as of London and New York, show a wide variation in size and population. The largest are Kreuzberg (a borough within Berlin proper), which has 366,000, and Charlottenburg, which has 325,000 population; the smallest is Zehlendorf with only 33,000. Each borough or *Bezirk* has a borough council composed of those members of the central city council who have been elected from the borough, together with a larger number of borough councilmen separately elected. In this way the borough and central city governments are tied up more intimately than is the case in London. Each borough also has a small administrative board, chosen by the borough council, and this board contains both paid and unpaid members. There are, however, no borough burgomasters.

The divisions of functions between the central and borough authorities is somewhat complicated and can only be here indicated in a general way. The central city government has jurisdiction, more particularly, over public works (including water supply and sewerage), transportation, public buildings, schools, and public health. Police administration is in the hands of the higher state authorities. The boroughs, as in London, retain jurisdiction over the strictly local phases of municipal administration, but in addition they serve as districts for the administration of the central services. The borough authorities are, therefore, to some extent the agents of the central city government. Both the boroughs and the central city government have their own budgets; for the current fiscal year (1923) the expenditures of the central city government somewhat exceed those of the twenty boroughs put together.

The work of administering the various departments is performed by joint commissions (*Deputationen*) of which the central city government maintains nineteen. The organization and methods of these joint commissions, the relations of the administrative board to the city council, the powers and functions of the burgomasters,—these continue substantially as they were in Prussian cities before the War. A full explanation may be found in the author's *Government of European Cities* (N. Y., 1909).

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